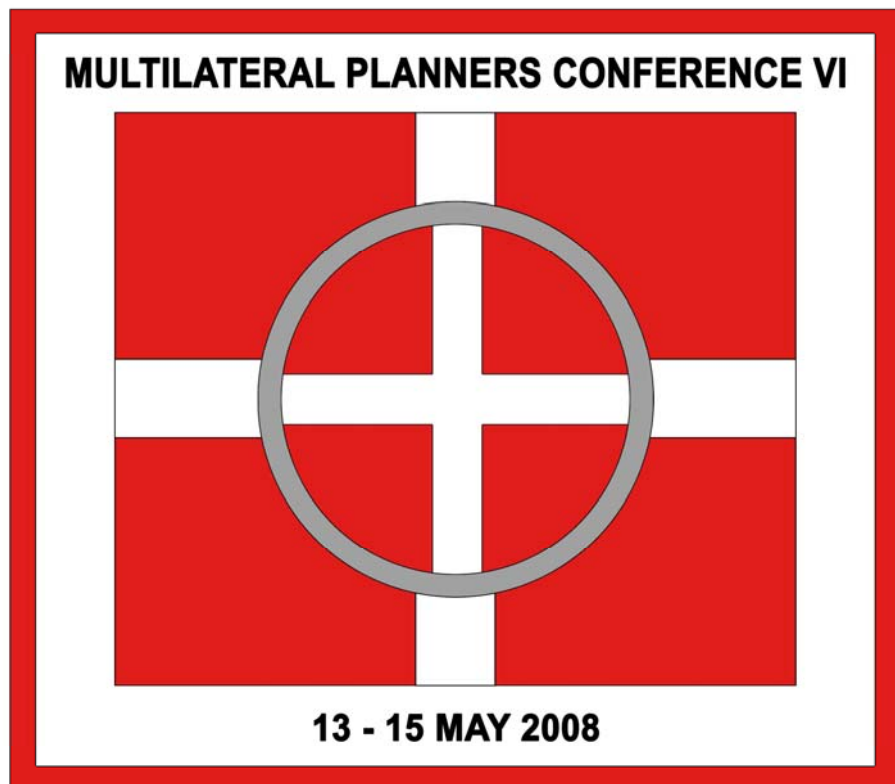


Maritime Security Document Supplement



***Global Maritime Security Cooperation
in an Age of Terrorism and Crime at Sea***

Copenhagen, Denmark

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RULE OF LAW IN THE OCEANS

A. United Nations Convention on the Law of the Sea—Selected Articles Relating to Freedom of Navigation on the High Seas and EEZs

Article 58

Rights and duties of other States in the exclusive economic zone

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.
2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.
3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

Article 87

Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:
 - (a) freedom of navigation;
 - (b) freedom of overflight;
 - (c) freedom to lay submarine cables and pipelines, subject to Part VI;
 - (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
 - (e) freedom of fishing, subject to the conditions laid down in section 2;
 - (f) freedom of scientific research, subject to Parts VI and XIII.
2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

Article 88
Reservation of the high seas for peaceful purposes

The high seas shall be reserved for peaceful purposes.*

Article 89
Invalidity of claims of sovereignty over the high seas

No State may validly purport to subject any part of the high seas to its sovereignty.

Article 90
Right of navigation

Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.

Article 91
Nationality of ships

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.
2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 95
Immunity of warships on the high seas

Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

Article 96
Immunity of ships used only on government non-commercial service

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State

* NOTE: This article expresses the general obligation of states to act peacefully in accordance with Articles 2(4) and 51 of the UN Charter.

Convention on the International Maritime Organization

Articles of the Convention – Summary

Part 1 – Purposes of the Organization

Article 1 – states the purposes of the organization are:

- (a) *To provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade, and to encourage the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships; and to deal with administrative and legal matters related to the purposes set out in this Article;*
- (b) *To encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade so as to promote the availability of shipping services to the commerce of the world without discrimination; assistance and encouragement given by a Government for the development of its national shipping and for purposes of security does not in itself constitute discrimination, provided that such assistance and encouragement is not based on measures designed to restrict the freedom of shipping of all flags to take part in international trade;*
- (c) *To provide for the consideration by the Organization of matters concerning unfair restrictive practices by shipping concerns in accordance with Part II;*
- (d) *To provide for the consideration by the Organization of any matters concerning shipping and the effect of shipping on the marine environment that may be referred to it by any organ or specialized agency of the United Nations;*
- (e) *To provide for the exchange of information among Governments on matters under consideration by the Organization.*

Part II – Functions

Article 2 – states that IMO provides for the drafting of conventions, agreements or other suitable instruments; provides machinery for consultation among Members and exchange of information; facilitates technical co-operation.

Article 3 – states that for matters “capable of settlement through the normal processes of international shipping business”, the IMO should recommend their resolution in that manner.

Part III – Membership

Articles 4-10 – give procedures for becoming a Member (or Associate Member) of IMO, by becoming Party to the IMO Convention.

Part IV – Organs

Article 11 – states the Organization consists of an Assembly, Council, Maritime Safety Committee, Legal Committee, Marine Environment Protection Committee (MEPC), Technical Co-operation Committee and “such subsidiary organs as the Organization may at any time consider necessary”; and a Secretariat.

Part V- The Assembly

Articles 12-15 – give constitution (all Members) and functions of the Assembly.

Part VI – The Council Articles 16-26 – relate to composition, election procedures and functions of the Council. **Part VII – Maritime Safety Committee Articles 27-31** – give constitution (all Members) and

functions/work of the Committee.

Part VIII – Legal Committee

Articles 32-36 – give constitution (all Members) and functions/work of the Committee.

Part IX – Marine Environment Protection Committee

Articles 37-41 – give constitution (all Members) and functions/work of the Committee.

Part X – Technical Co-operation Committee

Articles 42-46 – give constitution (all Members) and functions/work of the Committee.

Part XI – The Secretariat

Articles 47-52 – give functions and duties of the Secretariat.

Part XII – Finances

Articles 53-56 – give financial obligations of the Member States

Part XIII – Voting

Article 57 – Each Member has one vote, decisions shall be by a majority vote.

Part XIV – Headquarters of the Organization

Article 58 – The headquarters is established in London; the Assembly may by two-thirds majority vote change the site if necessary; sessions may be held in any place other than Headquarters if Council deems it necessary.

Part XV – Relationship with the United Nations and other organizations

Articles 59-63 – relate to relationships and co-operation with the United Nations, intergovernmental organizations and non-governmental organizations.

Part XVI – Legal capacity, privileges and immunities

Articles 64-65 – refers to the General Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations and refers to Appendix II of the IMO Convention which gives provisions on legal capacity, privileges and immunities which should be applied by Members and by the Organization.

Part XVII – Amendments

Articles 66-68 – Amendments to the IMO Convention must be adopted by two-third majority vote of the Assembly and enter into force 12 months after acceptance by two-thirds of Member States.

Part XVIII – Interpretation

Articles 69-70 – questions or disputes over interpretation or application of the Convention shall be referred to the Assembly; if they cannot be settled, they must be referred to the International Court of justice for an advisory opinion.

Part XIX – Miscellaneous Provisions

Articles 71-73 – cover signature and acceptance; territories; withdrawal.

Part XX – Entry into force

Articles 74-77 – entry into force provisions.

http://www.imo.org/conventions/mainframe.asp?topic_id=771

PIRACY AND ARMED ROBBERY AT SEA

A. The United Nations Convention on the Law of the Sea—Selected Articles relating to Piracy

Article 99
Prohibition of the transport of slaves

Every State shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall *ipso facto* be free.

Article 100
Duty to cooperate in the repression of piracy

All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 101
Definition of piracy

Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 102
Piracy by a warship, government ship or government aircraft
whose crew has mutinied

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

Article 103
Definition of a pirate ship or aircraft

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 104

Retention or loss of the nationality of a pirate ship or aircraft

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 105

Seizure of a pirate ship or aircraft

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 106

Liability for seizure without adequate grounds

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.

Article 107

Ships and aircraft which are entitled to seize on account of piracy

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Article 108

Illicit traffic in narcotic drugs or psychotropic substances

1. All States shall cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions.

2. Any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the cooperation of other States to suppress such traffic.

Regional Cooperation Agreement on Combating Piracy
and Armed Robbery against Ships in Asia

The Contracting Parties to this Agreement,

Concerned about the increasing number of incidents of piracy
and armed robbery against ships in Asia,

Mindful of the complex nature of the problem of piracy and
armed robbery against ships,

Recognizing the importance of safety of ships, including
their crew, exercising the right of navigation provided for in
the United Nations Convention on the Law of the Sea of 10
December 1982, hereinafter referred to as "the UNCLOS",

Reaffirming the duty of States to cooperate in the prevention
and suppression of piracy under the UNCLOS,

Recalling "Tokyo Appeal" of March 2000, "Asia Anti-Piracy
Challenges 2000" of April 2000 and "Tokyo Model Action Plan"
of April 2000,

Noting the relevant resolutions adopted by the United Nations
General Assembly and the relevant resolutions and
recommendations adopted by the International Maritime
Organization,

Conscious of the importance of international cooperation as
well as the urgent need for greater regional cooperation and
coordination of all States affected within Asia, to prevent
and suppress piracy and armed robbery against ships
effectively,

Convinced that information sharing and capacity building
among the Contracting Parties will significantly contribute
towards the prevention and suppression of piracy and armed
robbery against ships in Asia,

Affirming that, to ensure greater effectiveness of this
Agreement, it is indispensable for each Contracting Party to
strengthen its measures aimed at preventing and suppressing
piracy and armed robbery against ships,

Determined to promote further regional cooperation and to
enhance the effectiveness of such cooperation,

Have agreed as follows:

Part I
Introduction

Article 1
Definitions

1. For the purposes of this Agreement, "piracy" means any of the following acts:

- (a) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship, or against persons or property on board such ship;
 - (ii) against a ship, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

2. For the purposes of this Agreement, "armed robbery against ships" means any of the following acts:

- (a) any illegal act of violence or detention, or any act of depredation, committed for private ends and directed against a ship, or against persons or property on board such ship, in a place within a Contracting Party's jurisdiction over such offences;
- (b) any act of voluntary participation in the operation of a ship with knowledge of facts making it a ship for armed robbery against ships;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 2 General Provisions

1. The Contracting Parties shall, in accordance with their respective national laws and regulations and subject to their available resources or capabilities, implement this Agreement, including preventing and suppressing piracy and armed robbery against ships, to the fullest extent possible.

2. Nothing in this Agreement shall affect the rights and obligations of any Contracting Party under the international agreements to which that Contracting Party is party, including the UNCLOS, and the relevant rules of international law.

3. Nothing in this Agreement shall affect the immunities of warships and other government ships operated for non-commercial purposes.

4. Nothing in this Agreement, nor any act or activity carried out under this Agreement shall prejudice the position of any Contracting Party with regard to any dispute concerning territorial sovereignty or any issues related to the law of the sea.

5. Nothing in this Agreement entitles a Contracting Party to undertake in the territory of another Contracting Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Contracting Party by its national law.

6. In applying paragraph 1 of Article 1, each Contracting Party shall give due regard to the relevant provisions of the UNCLOS without prejudice to the rights of the third Parties.

Article 3 General Obligations

1. Each Contracting Party shall, in accordance with its national laws and regulations and applicable rules of international law, make every effort to take effective measures in respect of the following:

- (a) to prevent and suppress piracy and armed robbery against ships;
- (b) to arrest pirates or persons who have committed armed robbery against ships;
- (c) to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize

the property on board such ships; and

(d) to rescue victim ships and victims of piracy or armed robbery against ships.

2. Nothing in this Article shall prevent each Contracting Party from taking additional measures in respect of subparagraphs (a) to (d) above in its land territory.

Part II Information Sharing Center

Article 4 Composition

1. An Information Sharing Center, hereinafter referred to as "the Center", is hereby established to promote close cooperation among the Contracting Parties in preventing and suppressing piracy and armed robbery against ships.

2. The Center shall be located in Singapore.

3. The Center shall be composed of the Governing Council and the Secretariat.

4. The Governing Council shall be composed of one representative from each Contracting Party. The Governing Council shall meet at least once every year in Singapore, unless otherwise decided by the Governing Council.

5. The Governing Council shall make policies concerning all the matters of the Center and shall adopt its own rules of procedure, including the method of selecting its Chairperson.

6. The Governing Council shall take its decisions by consensus.

7. The Secretariat shall be headed by the Executive Director who shall be assisted by the staff. The Executive Director shall be chosen by the Governing Council.

8. The Executive Director shall be responsible for the administrative, operational and financial matters of the Center in accordance with the policies as determined by the Governing Council and the provisions of this Agreement, and for such other matters as determined by the Governing Council.

9. The Executive Director shall represent the Center. The Executive Director shall, with the approval of the Governing Council, make rules and regulations of the Secretariat.

Article 5
Headquarters Agreement

1. The Center, as an international organization whose members are the Contracting Parties to this Agreement, shall enjoy such legal capacity, privileges and immunities in the Host State of the Center as are necessary for the fulfillment of its functions.
2. The Executive Director and the staff of the Secretariat shall be accorded, in the Host State, such privileges and immunities as are necessary for the fulfillment of their functions.
3. The Center shall enter into an agreement with the Host State on matters including those specified in paragraphs 1 and 2 of this Article.

Article 6
Financing

1. The expenses of the Center, as provided for in the budget decided by the Governing Council, shall be provided by the following sources:
 - (a) Host State financing and support;
 - (b) Voluntary contributions from the Contracting Parties;
 - (c) Voluntary contributions from international organizations and other entities, in accordance with relevant criteria adopted by the Governing Council; and
 - (d) Any other voluntary contributions as may be agreed upon by the Governing Council.
2. Financial matters of the Center shall be governed by a Financial Regulation to be adopted by the Governing Council.
3. There shall be an annual audit of the accounts of the Center by an independent auditor appointed by the Governing Council. The audit report shall be submitted to the Governing Council and shall be made public, in accordance with the Financial Regulation.

Article 7
Functions

The functions of the Center shall be:

- (a) to manage and maintain the expeditious flow of

information relating to incidents of piracy and armed robbery against ships among the Contracting Parties;

- (b) to collect, collate and analyze the information transmitted by the Contracting Parties concerning piracy and armed robbery against ships, including other relevant information, if any, relating to individuals and transnational organized criminal groups committing acts of piracy and armed robbery against ships;
- (c) to prepare statistics and reports on the basis of the information gathered and analyzed under subparagraph (b), and to disseminate them to the Contracting Parties;
- (d) to provide an appropriate alert, whenever possible, to the Contracting Parties if there is a reasonable ground to believe that a threat of incidents of piracy or armed robbery against ships is imminent;
- (e) to circulate requests referred to in Article 10 and relevant information on the measures taken referred to in Article 11 among the Contracting Parties;
- (f) to prepare non-classified statistics and reports based on information gathered and analyzed under subparagraph (b) and to disseminate them to the shipping community and the International Maritime Organization; and
- (g) to perform such other functions as may be agreed upon by the Governing Council with a view to preventing and suppressing piracy and armed robbery against ships.

Article 8 Operation

1. The daily operation of the Center shall be undertaken by the Secretariat.

2. In carrying out its functions, the Center shall respect the confidentiality of information provided by any Contracting Party, and shall not release or disseminate such information unless the consent of that Contracting Party is given in advance.

3. The Center shall be operated in an effective and transparent manner, in accordance with the policies made by the Governing Council, and shall avoid duplication of existing activities between the Contracting Parties.

Part III
Cooperation through the Information Sharing Center

Article 9
Information Sharing

1. Each Contracting Party shall designate a focal point responsible for its communication with the Center, and shall declare its designation of such focal point at the time of its signature or its deposit of an instrument of notification provided for in Article 18.

2. Each Contracting Party shall, upon the request of the Center, respect the confidentiality of information transmitted from the Center.

3. Each Contracting Party shall ensure the smooth and effective communication between its designated focal point, and other competent national authorities including rescue coordination centers, as well as relevant non-governmental organizations.

4. Each Contracting Party shall make every effort to require its ships, ship owners, or ship operators to promptly notify relevant national authorities including focal points, and the Center when appropriate, of incidents of piracy or armed robbery against ships.

5. Any Contracting Party which has received or obtained information about an imminent threat of, or an incident of, piracy or armed robbery against ships shall promptly notify relevant information to the Center through its designated focal point.

6. In the event that a Contracting Party receives an alert from the Center as to an imminent threat of piracy or armed robbery against ships pursuant to subparagraph (d) of Article 7, that Contracting Party shall promptly disseminate the alert to ships within the area of such an imminent threat.

Article 10
Request for Cooperation

1. A Contracting Party may request any other Contracting Party, through the Center or directly, to cooperate in detecting any of the following persons, ships, or aircraft:

(a) pirates;

(b) persons who have committed armed robbery against ships;

(c) ships or aircraft used for committing piracy or armed robbery against ships, and ships taken by and under the control of pirates or persons who have committed armed robbery against ships; or

(d) victim ships and victims of piracy or armed robbery against ships.

2. A Contracting Party may request any other Contracting Party, through the Center or directly, to take appropriate measures, including arrest or seizure, against any of the persons or ships mentioned in subparagraph (a), (b), or (c) of paragraph 1 of this Article, within the limits permitted by its national laws and regulations and applicable rules of international law.

3. A Contracting Party may also request any other Contracting Party, through the Center or directly, to take effective measures to rescue the victim ships and the victims of piracy or armed robbery against ships.

4. The Contracting Party which has made a direct request for cooperation pursuant to paragraphs 1, 2 and 3 of this Article shall promptly notify the Center of such request.

5. Any request by a Contracting Party for cooperation involving extradition or mutual legal assistance in criminal matters shall be made directly to any other Contracting Party.

Article 11

Cooperation by the Requested Contracting Party

1. A Contracting Party, which has received a request pursuant to Article 10, shall, subject to paragraph 1 of Article 2, make every effort to take effective and practical measures for implementing such request.

2. A Contracting Party, which has received a request pursuant to Article 10, may seek additional information from the requesting Contracting Party for the implementation of such request.

3. A Contracting Party, which has taken measures referred to in paragraph 1 of this Article, shall promptly notify the Center of the relevant information on the measures taken.

Part IV
Cooperation

Article 12
Extradition

A Contracting Party shall, subject to its national laws and regulations, endeavor to extradite pirates or persons who have committed armed robbery against ships, and who are present in its territory, to the other Contracting Party which has jurisdiction over them, at the request of that Contracting Party.

Article 13
Mutual Legal Assistance

A Contracting Party shall, subject to its national laws and regulations, endeavor to render mutual legal assistance in criminal matters, including the submission of evidence related to piracy and armed robbery against ships, at the request of another Contracting Party.

Article 14
Capacity Building

1. For the purpose of enhancing the capacity of the Contracting Parties to prevent and suppress piracy and armed robbery against ships, each Contracting Party shall endeavor to cooperate to the fullest possible extent with other Contracting Parties which request cooperation or assistance.

2. The Center shall endeavor to cooperate to the fullest possible extent in providing capacity building assistance.

3. Such capacity building cooperation may include technical assistance such as educational and training programs to share experiences and best practices.

Article 15
Cooperative Arrangements

Cooperative arrangements such as joint exercises or other forms of cooperation, as appropriate, may be agreed upon among the Contracting Parties concerned.

Article 16
Protection Measures for Ships

Each Contracting Party shall encourage ships, ship owners, or ship operators, where appropriate, to take protective measures against piracy and armed robbery against ships, taking into account the relevant international standards and practices, in

particular, recommendations adopted by the International Maritime Organization.

Part V
Final Provisions

Article 17
Settlement of Disputes

Disputes arising out of the interpretation or application of this Agreement, including those relating to liability for any loss or damage caused by the request made under paragraph 2 of Article 10 or any measure taken under paragraph 1 of Article 11, shall be settled amicably by the Contracting Parties concerned through negotiations in accordance with applicable rules of international law.

Article 18
Signature and Entry into Force

1. This Agreement shall be open for signature at the depositary referred to in paragraph 2 below by the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of China, the Republic of India, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, the Socialist Republic of Viet Nam.

2. The Government of Singapore is the depositary of this Agreement.

3. This Agreement shall enter into force 90 days after the date on which the tenth instrument of notification by a State listed in paragraph 1, indicating the completion of its domestic requirements, is submitted to the depositary. Subsequently it shall enter into force in respect of any other State listed in paragraph 1 above 30 days after its deposit of an instrument of notification to the depositary.

4. The depositary shall notify all the States listed in paragraph 1 of the entry into force of this Agreement pursuant to paragraph 3 of this Article.

5. After this Agreement has entered into force, it shall be open for accession by any State not listed in paragraph 1. Any State desiring to accede to this Agreement may so notify the depositary, which shall promptly circulate the receipt of such notification to all other Contracting Parties. In the absence of a written objection by a Contracting Party within

90 days of the receipt of such notification by the depositary, that State may deposit an instrument of accession with the depositary, and become a party to this Agreement 60 days after such deposit of instrument of accession.

Article 19 Amendment

1. Any Contracting Party may propose an amendment to this Agreement, any time after the Agreement enters into force. Such amendment shall be adopted with the consent of all Contracting Parties.
2. Any amendment shall enter into force 90 days after the acceptance by all Contracting Parties. The instruments of acceptance shall be deposited with the depositary, which shall promptly notify all other Contracting Parties of the deposit of such instruments.

Article 20 Withdrawal

1. Any Contracting Party may withdraw from this Agreement at any time after the date of its entry into force.
2. The withdrawal shall be notified by an instrument of withdrawal to the depositary.
3. The withdrawal shall take effect 180 days after the receipt of the instrument of withdrawal by the depositary.
4. The depositary shall promptly notify all other Contracting Parties of any withdrawal.

Article 21 Authentic Text

This Agreement shall be authentic in the English language.

Article 22 Registration

This Agreement shall be registered by the depositary pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Resolution A.1002(25)
Adopted on 29 November 2007
(Agenda item 19(a))

PIRACY¹ AND ARMED ROBBERY AGAINST SHIPS²
IN WATERS OFF THE COAST OF SOMALIA

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships,

RECALLING ALSO article 1 of the Charter of the United Nations, which includes, among the purposes of the United Nations, the maintenance of international peace and security,

ALSO RECALLING article 100 of the United Nations Convention on the Law of the Sea (UNCLOS), which requires all States to co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State,

FURTHER RECALLING article 105 of UNCLOS which, *inter alia*, provides that, on the high seas or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates and arrest the persons and seize the property on board,

BEARING IN MIND article 110 of UNCLOS which, *inter alia*, enables warships, military aircraft, or other duly authorized ships or aircraft clearly marked and identifiable as being on government service to board any ship, other than a ship entitled to complete immunity in accordance with article 95 and article 96 of UNCLOS, when there are reasonable grounds for suspecting that the ship is, *inter alia*, engaged in piracy,

REAFFIRMING resolution A.545(13) on “Measures to prevent acts of piracy and armed robbery against ships”, adopted on 17 November 1983; resolution A.683(17) on “Prevention and suppression of acts of piracy and armed robbery against ships”, adopted on 6 November 1991;

¹ “Piracy” is defined in article 101 of the United Nations Convention on the Law of the Sea as follows:

“Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).”

² “Armed robbery against ships” is defined in the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships (resolution A.922(22), annex, paragraph 2.2), as follows:

“Armed robbery against ships means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of “piracy”, directed against a ship or against persons or property on board such ship, within a State’s jurisdiction over such offences.”

and resolution A.738(18) on “Measures to prevent and suppress piracy and armed robbery against ships”, adopted on 4 November 1993,

BEARING IN MIND resolution A.922(22), through which the Assembly adopted the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships (“the Code”) and which, *inter alia*, urges Governments to take action, as set out in the Code, to investigate all acts of piracy and armed robbery against ships occurring in areas or on board ships under their jurisdiction; and to report to the Organization pertinent information on all investigations and prosecutions concerning these acts,

BEARING IN MIND ALSO resolution A.979(24) on “Piracy and armed robbery against ships in waters off the coast of Somalia”, by means of which the Assembly, *inter alia*:

- recommended a number of measures to protect ships from piracy and armed robbery attacks in waters off the coast of Somalia and by means of which the situation was brought to the attention of the Security Council of the United Nations (“the Security Council”);
- requested the Secretary-General to continue monitoring the situation in relation to threats to ships sailing in waters off the coast of Somalia and to report to the Council, as and when appropriate, on developments and any further actions which might be required; and
- requested the Council to monitor the situation in relation to threats to ships sailing in waters off the coast of Somalia and to initiate any actions it might deem necessary to ensure the protection of seafarers and ships sailing in waters off the coast of Somalia,

NOTING WITH SATISFACTION the actions taken by the Council and the Secretary-General pursuant to resolution A.979(24),

CONSIDERING that the Maritime Safety Committee has approved MSC/Circ.622/Rev.1 and MSC/Circ.623/Rev.3 containing recommendations to Governments and guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships and has established a special signal for use by ships under attack or threat of attack,

NOTING that the General Assembly of the United Nations, at its sixty-first session, by resolution A/RES/61/222 on “Oceans and the law of the sea”, adopted on 20 December 2006, *inter alia*:

- .1 encourages States to co-operate to address threats to maritime safety and security, including piracy, armed robbery at sea, smuggling and terrorist acts against shipping, offshore installations and other maritime interests, through bilateral and multilateral instruments and mechanisms aimed at monitoring, preventing and responding to such threats;
- .2 urges all States, in co-operation with the Organization, to combat piracy and armed robbery at sea by adopting measures, including those relating to assistance with capacity building through training of seafarers, port staff and enforcement personnel in the prevention, reporting and investigation of incidents, bringing the alleged perpetrators to justice, in accordance with international law, and by

adopting national legislation, as well as providing enforcement vessels and equipment and guarding against fraudulent ship registration; and

- .3 calls upon States to become parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; invites States to consider becoming parties to the 2005 Protocols amending those instruments; and also urges States parties to take appropriate measures to ensure the effective implementation of those instruments, through the adoption of legislation, where appropriate,

NOTING ALSO, with great concern, the increasing number of incidents of piracy and armed robbery against ships occurring in waters off the coast of Somalia, some of which have reportedly taken place more than 200 nautical miles from the nearest land,

MINDFUL OF the grave danger to life and the serious risks to navigational safety and the environment to which such incidents may give rise,

BEING PARTICULARLY CONCERNED that the Monitoring Group³ on Somalia, in its report⁴ of 27 June 2007 to the Security Council, confirmed, *inter alia*, that piracy and armed robbery against ships in waters off the coast of Somalia, unlike in other parts of the world, is caused by the lack of lawful administration and inability of the authorities to take affirmative action against the perpetrators, which allows the “pirate command centres” to operate without hindrance at many points along the coast of Somalia,

BEING AWARE of the serious safety and security concerns the shipping industry and the seafaring community continue to have as a result of the attacks against ships sailing in waters off the coast of Somalia referred to above,

BEING CONCERNED at the negative impact such attacks continue to have on the prompt and effective delivery of food aid and of other humanitarian assistance to Somalia and the serious threat this poses to the health and well-being of the people of Somalia,

NOTING, with appreciation, the “Sub-regional seminar and workshop on piracy and armed robbery against ships” held by IMO in Sana’a, Yemen, from 9 to 13 April 2005, for countries in the Red Sea and Gulf of Aden region; and the follow-up meeting held in Muscat, Oman, from 14 to 18 January 2006,

BEING AWARE that the Security Council has, through resolution S/Res/1425(2002), adopted on 22 July 2002, stipulated that the arms embargo on Somalia prohibits the direct or indirect supply to Somalia of technical advice, financial and other assistance, and training related to military activities,

NOTING that the Security Council, by resolution S/Res/1766(2007) adopted on 23 July 2007, decided, *inter alia*, to re-establish the Monitoring Group on Somalia and directed it to continue to investigate, in coordination with relevant international agencies, all activities, including in the financial, maritime and other sectors, which generate revenues used to

³ Established by the Security Council through resolution S/Res/1519(2003) and its mandate was renewed and expanded through resolutions S/Res/1558(2004), S/Res/1587(2005), S/Res/1630(2005), S/Res/1676(2006), S/Res/1724(2006) and S/Res/1766(2007).

⁴ See United Nations document S/2007/436, paragraphs 89 to 91 and 118 and 119; Report of the Monitoring Group on Somalia pursuant to Security Council resolution S/Res/1724(2006).

commit violations of the embargo on all delivery of weapons and military equipment to Somalia, which the Security Council had established by resolution S/Res/733(1992),

NOTING ALSO that the Security Council, being concerned at the continuing incidence of acts of piracy and armed robbery against ships in waters off the coast of Somalia:

- .1 on 15 March 2006, in response to resolution A.979(24), through a Statement⁵ by the President of the Security Council, *inter alia*, encouraged Member States of the United Nations, whose naval vessels and military aircraft operate in international waters and airspace adjacent to the coast of Somalia, to be vigilant to any incident of piracy therein and to take appropriate action to protect merchant shipping, in particular the transportation of humanitarian aid, against any such act, in line with relevant international law and further urged co-operation among all States, particularly regional States, and active prosecution of piracy offences; and
- .2 on 20 August 2007, in operative paragraph 18 of resolution S/Res/1772(2007) encouraged Member States of the United Nations, whose naval vessels and military aircraft operate in international waters and airspace adjacent to the coast of Somalia, to be vigilant to any incident of piracy therein and to take appropriate action to protect merchant shipping, in particular the transportation of humanitarian aid, against any such act, in line with relevant international law,

NOTING WITH APPRECIATION the action taken by the Secretary-General of the United Nations in response to the request of the Council, at its ninety-eighth session, in particular, to bring the Organization's concerns to the President of the Security Council with a request to bring them to the attention of the members of the Security Council,

RECOGNIZING that the particular character of the present situation in Somalia requires an exceptional response to safeguard the interests of the maritime community making use of the sea off the coast of Somalia,

RECOGNIZING ALSO the strategic importance of the navigational routes along the coast of Somalia for regional and global seaborne trade and the need to ensure that they remain safe at all times,

RECOGNIZING FURTHER, in view of the continued situation in Somalia giving rise to grave concern, the need for the immediate establishment of appropriate measures to protect ships sailing in waters off the coast of Somalia from piracy and armed robbery attacks,

APPRECIATING the efforts of those who have responded to calls from, or have rendered assistance to, ships under attack in waters off the coast of Somalia; acknowledging the efforts of a number of international organizations in raising awareness amongst, and providing guidance for, their respective memberships and reporting to the Organization in relation to this issue; and noting with appreciation the work done by the International Maritime Bureau of the International Chamber of Commerce in providing the industry with warnings in relation to incidents occurring in waters off the coast of Somalia and assistance in resolving cases where ships have been hijacked and the seafarers on board have been held hostage,

RESPECTING FULLY the sovereignty, sovereign rights, jurisdiction and territorial integrity of Somalia and the relevant provisions of international law, in particular UNCLOS,

⁵ See United Nations document S/PRST/2006/11.

HAVING CONSIDERED the actions taken, following the adoption of resolution A.979(24), by the Council, at its ninety-eighth regular and twenty-fourth extraordinary sessions, and by the Secretary-General in the light of the prevailing situation in the waters off the coast of Somalia,

1. CONDEMNS AND DEPLORES all acts of piracy and armed robbery against ships irrespective of where such acts have occurred or may occur;

2. APPEALS to all parties which may be able to assist to take action, within the provisions of international law, to ensure that:

- .1 all acts or attempted acts of piracy and armed robbery against ships are terminated forthwith and any plans for committing such acts are abandoned; and
- .2 any hijacked ships, seafarers serving in them and any other persons on board are immediately and unconditionally released and that no harm is caused to them;

3. STRONGLY URGES Governments to increase their efforts to prevent and suppress, within the provisions of international law, acts of piracy and armed robbery against ships irrespective of where such acts occur and, in particular, to co-operate with other Governments and international organizations, in the interests of the rule of law, safety of life at sea and environmental protection, in relation to acts occurring or likely to occur in the waters off the coast of Somalia;

4. ALSO STRONGLY URGES Governments to promptly:

- .1 issue, to ships entitled to fly their flag, as necessary, specific advice and guidance on any appropriate additional precautionary measures ships may need to put in place when sailing in waters off the coast of Somalia to protect themselves from attack, which may include, *inter alia*, areas to be avoided;
- .2 issue, to ships entitled to fly their flag, as necessary, advice and guidance on any measures or actions they may need to take when they are under attack, or threat of attack, whilst sailing in waters off the coast of Somalia;
- .3 encourage ships entitled to fly their flag to ensure that information on attempted attacks or on acts of piracy or armed robbery committed whilst sailing in waters off the coast of Somalia is promptly conveyed to the nearby coastal States and to the nearest most appropriate Rescue Coordination Centre;
- .4 provide a point of contact through which ships entitled to fly their flag may request advice or assistance when sailing in waters off the coast of Somalia and to which such ships can report any security concerns about other ships, movements or communications in the area;
- .5 bring to the attention of the Secretary-General information on attempted attacks or on acts of piracy or armed robbery committed against ships entitled to fly their flag whilst sailing in waters off the coast of Somalia for him to take appropriate action in the circumstances;
- .6 encourage ships entitled to fly their flag to implement expeditiously, for the ship's protection and for the protection of other ships in the vicinity, any measure of

advise the nearby coastal States or any other State or competent authority may have provided;

- .7 establish, as necessary, plans and procedures to assist owners, managers and operators of ships entitled to fly their flag in the speedy resolution of hijacking cases occurring in the waters off the coast of Somalia;
- .8 investigate all acts or attempted acts of piracy and armed robbery against ships entitled to fly their flag occurring in the waters off the coast of Somalia and to report to the Organization any pertinent information;
- .9 take all necessary legislative, judicial and law enforcement action so as to be able, subject to national law, to receive and prosecute or extradite any pirates or suspected pirates and armed robbers arrested by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service; and
- .10 with respect to ships entitled to fly their flag employed by the World Food Programme for the delivery of humanitarian aid to Somalia, where such ships are to be escorted by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service, to conclude, taking into account operative paragraph 6.4, any necessary agreements with the State(s) concerned;

5. REQUESTS Governments to instruct national Rescue Coordination Centres or other agencies involved, on receipt of a report of an attack, to promptly initiate the transmission of relevant advice and warnings, through the World-Wide Navigation Warning Service, the International SafetyNet Service or otherwise, to ships sailing in the waters off the coast of Somalia so as to warn shipping in the immediate area of the attack;

6. REQUESTS ALSO the Transitional Federal Government of Somalia to:

- .1 take any action it deems necessary in the circumstances to prevent and suppress acts of piracy and armed robbery against ships originating from within Somalia and thus depriving them of the possibility of using its coastline as a safe haven from where to launch their operations;
- .2 take appropriate action to ensure that all ships seized by pirates and armed robbers and brought into waters within its territory are released promptly and that ships sailing off the coast of Somalia do not henceforth become victims of acts of piracy or armed robbery;
- .3 advise the Security Council that, in response to the pressing request of the Council of the International Maritime Organization, it consents to warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service, operating in the Indian Ocean, entering its territorial sea when engaging in operations against pirates or suspected pirates and armed robbers endangering the safety of life at sea, in particular the safety of crews on board ships carrying, under the World Food Programme, humanitarian aid to Somalia or leaving Somali ports after having discharged their cargo, together with any conditions attached to the consent given; and

- .4 advise also the Security Council of its readiness to conclude, taking into account operative paragraph 4.10, any necessary agreements so as to enable warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service to escort ships employed by the World Food Programme for the delivery of humanitarian aid to Somalia or leaving Somali ports after having discharged their cargo;
 7. CALLS UPON Governments in the region to conclude, in co-operation with the Organization, and implement, as soon as possible, a regional agreement to prevent, deter and suppress piracy and armed robbery against ships;
 8. ALSO CALLS UPON all other Governments, in co-operation with the Organization and as requested by those Governments in the region, to assist these efforts;
 9. REQUESTS FURTHER the Secretary-General to:
 - .1 transmit a copy of the present resolution to the Secretary-General of the United Nations for consideration and any further action he may deem appropriate;
 - .2 continue monitoring the situation in relation to threats to ships sailing in waters off the coast of Somalia and to report to the Council, as and when appropriate, on developments and any further actions which may be required;
 - .3 establish and maintain co-operation with the Monitoring Group on Somalia; and
 - .4 consult with interested Governments and organizations in establishing the process and means by which technical assistance can be provided to Somalia and nearby coastal States to enhance the capacity of these States to give effect to the present resolution as appropriate;
 10. REQUESTS the Maritime Safety Committee to review and update, as a matter of urgency, MSC/Circ.622/Rev.1, MSC/Circ.623/Rev.3 and resolution A.922(22), taking into account current trends and practices;
 11. ALSO REQUESTS the Council to continue to monitor the situation in relation to threats to ships sailing in waters off the coast of Somalia and to initiate any actions which it may deem necessary to ensure the protection of seafarers and ships sailing in waters off the coast of Somalia;
 12. REVOKES resolution A.979(24).
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Ref. T1/13.01

MSC/Circ.622/Rev.1
16 June 1999

PIRACY AND ARMED ROBBERY AGAINST SHIPS

Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships

1 The Maritime Safety Committee, at its seventy-first session (19 to 28 May 1999), reviewed MSC/Circ.622 (Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships) and prepared the revised recommendations given at annex.

2 The review was carried out on the basis of the recommendations of the regional seminars and workshops on Piracy and armed robbery against ships conducted by IMO in Brasilia (20 to 22 October 1998) and Singapore (3 to 5 February 1999).

3 Member Governments, in particular those within areas identified as affected by acts of piracy and armed robbery against ships, are recommended to take any necessary action to implement, as appropriate, the recommendations given at annex.

4 Member Governments are also recommended to bring this circular and MSC/Circ.623/Rev.1 to the attention of all national agencies concerned with anti-piracy and anti-armed robbery activities, shipowners, ship operators, shipping companies, shipmasters and crews.

ANNEX

**RECOMMENDATIONS TO GOVERNMENTS
FOR PREVENTING AND SUPPRESSING PIRACY*
AND ARMED ROBBERY AGAINST SHIPS**

Piracy and armed robbery against ships

1 Before embarking on any set of measures or recommendations, it is imperative for governmental or other agencies concerned to gather accurate statistics of the incidents of piracy and armed robbery against ships, to collate these statistics under both type and area and to assess the nature of the attacks with special emphasis on types of attack, accurate geographical location and modus operandi of the wrongdoers and to disseminate or publish these statistics to all interested parties in a format that is understandable and usable. Furthermore Governments should involve representatives of shipowners and seafarers in developing measures to prevent and suppress piracy and armed robbery against ships.

2 In any ongoing campaign against piracy and armed robbery, it is necessary, wherever possible, to neutralize the activities of pirates and armed robbers. As these people are criminals under both international law and most national laws, this task will generally fall to the security forces of the States involved.

3 Ships can and should take measures to protect themselves from pirates and armed robbers. These measures are recommended in MSC/Circ.623/Rev.1. While security forces can often advise on these measures, and flag States are required to take such measures as are necessary to ensure that owners and masters accept their responsibility, ultimately it is the responsibility of owners, masters and ship operators to take seamanlike precautions when their ships navigate in areas where the threat of piracy and armed robbery exists.

4 The Coastal State/Port State should develop Action Plans detailing how to prevent such an attack in the first place and actions to take in case of an attack. Flag States should develop Action Plans detailing the actions to be taken on the receipt of a report of an attack. Because of the possibility of collision or grounding of a ship as a result of an attack, the Coastal/Port States will need to develop plans to counter any subsequent oil spills or leakages of hazardous substances that the ship or ships may be carrying. This is especially important in areas of restricted navigation.

5 All national agencies involved in preventing and suppressing piracy and armed robbery against ships should take appropriate measures for the purpose of maximizing efficiency and effectiveness and, at the same time, minimizing any relevant adversity. The Coastal/Port States should also establish the necessary infrastructure and operational arrangements for the purpose of preventing and suppressing piracy and armed robbery against ships.

* The following definition of piracy is contained in article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS):

“Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).”

6 On communication and co-operation between various agencies, and the response time after an incident has been reported to the coastal State:

- .1 an incident command system for tactical as well as operational response should be adopted in each country concerned to provide a common terminology; integrated communications; a unified command structure; consolidated action plans; a manageable span of control; designated incident facilities; and comprehensive resource management;
- .2 existing mechanisms for dealing with other maritime security matters, e.g. smuggling, drug-trafficking and terrorism, should be incorporated into the incident command system in order to allow for efficient use of limited resources; and
- .3 procedures for rapidly relaying alerts received by communication centres to the entity responsible for action should be developed or, if existing, reviewed.

7 It is imperative that all attacks, or threats of attacks, are reported immediately by radio to the nearest RCC or coast radio station to alert the Coastal State/Port State and followed up by a more detailed written report. On receipt of radio reports of an attack or post attack reports, the RCC or other agency involved must take immediate action to:

- .1 inform the local security authorities so that contingency plans (counter action) may be implemented; and
- .2 alert other ships in the area to the incident utilizing any appropriate communication means available to it, in order to create or increase their awareness.

8 The report received by maritime Administrations may be used in any diplomatic approaches made by the flag State to the Government of the coastal State in which the incident occurred. This will also provide the basis for the report to IMO.

9 Coastal States/Port States should report to IMO any act of piracy or armed robbery in their waters. The format presently used for reports to IMO is attached at appendix 4.

10 The recording and initial examination of reports is best done, wherever possible, by a central agency possessing the necessary skills and resources. In order to maintain the required credibility, both from Government and commercial sectors, such an agency must be accurate, authoritative, efficient and impartial in both its product and its dealings with others. It is judged that the organization best suited to this role is IMO itself, although the use of IMB's Piracy Reporting Centre in Kuala Lumpur, Malaysia, as a satellite for dissemination of information should also be considered.

11 The detailed work of assessment should be carried out by the security forces of the coastal State concerned who will probably have access to further information to complete the picture and background of the attacks and those persons responsible.

12 It is important that, once the collection and collation stages have been completed, the product be distributed to all agencies that need to know. These agencies include the Governments of coastal States for onward passing, the Governments of flag States for passing through maritime Administrations to shipowners and to other interested Government departments.

13 To encourage masters to report all incidents of piracy and armed robbery against ships, coastal States/port States should make every endeavour to ensure that these masters and their ships will not be unduly delayed and that the ship will not be burdened with additional costs related to such reporting.

14 On investigation into reported incidents and prosecution of pirates and armed robbers when caught:

- .1 it should be firmly established which entity in each country has responsibility and legal authority for carrying out post-attack investigations, since confusion during the hours after an incident may result in missed investigative opportunities and loss or deterioration of evidence;
- .2 the appointed investigation agency should have personnel trained in standard investigative techniques and who are familiar with the legal requirements of the courts of their countries, as it is widely assumed that prosecution, conviction and confiscation of assets of offenders are the most effective means of discouraging would-be offenders;
- .3 as offenders may be involved in other kinds of offences, piracy and armed robbery against ships should not be viewed in isolation and useful information should therefore, be sought in existing criminal records; and
- .4 systems should be in place to ensure that potentially useful information is disseminated to all appropriate parties, including investigators.

15 IMO regularly sends to coastal States reports of armed robbery said to have been committed in their territorial waters and requesting for information on the result of any investigations they have conducted. Coastal States are requested to respond to these inquiries even when they are unable to conduct an inquiry either because the incident was not reported or was reported too late for an investigation to be conducted. Any such responses should continue to be circulated to the sessions of the Committee.

Jurisdiction and intervention

Criminal jurisdiction

16 A person apprehended at sea outside the territorial sea of any State for committing acts of piracy or armed robbery against ships, should be prosecuted under the laws of the investigating State by mutual agreement with other substantially interested States.

Substantially interested State means a State:

- .1 which is the flag State of a ship that is the subject of an investigation; or
- .2 in whose territorial sea an incident has occurred; or
- .3 where an incident caused, or threatened, serious harm to the environment of that State, or within those areas over which the State is entitled to exercise jurisdiction as recognized under international law; or

- .4 where the consequences of an incident caused, or threatened, serious harm to that State or to artificial islands, installations or structures over which it is entitled to exercise jurisdiction; or
- .5 where, as a result of an incident, nationals of that State lost their lives or received serious injuries; or
- .6 that has at its disposal important information that may be of use to the investigation; or
- .7 that, for some other reason, establishes an interest that is considered significant by the lead investigating State;
- .8 that was requested by another State to assist in the repression of violence against crews, passengers, ships and cargoes or the collection of evidence; or
- .9 that intervened under UNCLOS article 100, exercised its right of visit, under UNCLOS article 110, or effected the seizure of a pirate/armed robber, ship or aircraft under UNCLOS article 105 or in port or on land.

17 States are recommended to take such measures as may be necessary to establish their jurisdiction over the offences of piracy and armed robbery at sea, including adjustment of their legislation, if necessary, to enable those States to apprehend and prosecute persons committing such offences.

18 For visits to ports in certain countries, ships need to carry amounts of money in cash to cover disbursements and other requirements. Cash on board a ship acts as a magnet for attackers. Where the carriage of large sums of cash is necessary because of exchange control restrictions in some States, these States are urged to take a more flexible approach.

19 Flag States should encourage all ships operating in waters where attacks occur to have a ship security plan. The ship security plan should be prepared having regard to the risks that may be faced, the crew members available, their capability and training, the ability to establish secure areas on board ship and the surveillance and detection equipment that has been provided.

20 If at all possible, ships should be routed away from areas where attacks are known to have taken place and, in particular, seek to avoid bottle-necks. If ships are approaching ports where attacks have taken place on ships at anchor, rather than on ships underway, and it is known that the ship will have to anchor off port for some time, consideration should be given to delaying anchoring by slow steaming or longer routing to remain well off shore thereby reducing the period during which the ship will be at risk. Such action should not affect the ship's berthing priority. Charterparty agreements should recognize that ships may need to deviate away from areas where attacks occur and that ships may need to delay arrival at such ports, either when no berth is available for the ship, or offshore loading or unloading will be delayed for a protracted period.

21 **Coastal States situated in areas affected by piracy and armed robbery**

- .1 in order to be able to respond, as quickly as possible, to any report from ships on piracy and armed robbery attacks, every piracy or armed robbery threat area should be adequately covered by Coast Earth Stations which are continuously operational, and which preferably are situated in the littoral State responsible for the area or in neighbouring States;

- .2 neighbouring countries having common borders in areas which can be characterized as piracy and armed robbery threat areas, should establish co-operation agreements with respect to preventing and suppressing piracy and armed robbery. Such agreements should include the co-ordination of patrol activities in such areas. An example of such an agreement is attached as appendix 5 to this circular;
- .3 on further development of regional co-operation, a regional agreement to facilitate co-ordinated response at the tactical as well as the operational level should be concluded between the countries concerned:
 - .3.1 such an agreement should specify how information would be disseminated; establish joint command and control procedures (a regional incident command system); ensure efficient communications; set policies for joint operations and entry and pursuit; establish the links between entities involved in all maritime security matters; establish joint specialized training of and the exchange of views between investigators; and establish joint exercises between tactical and operational entities; and
 - .3.2 that existing agreements, bilateral or regional, be reviewed, if necessary, to allow for the extension of entry and pursuit into the territorial sea of the State(s) with which the agreement has been made and practical operational procedures which will ensure the granting of permission to extend pursuit into another jurisdiction being received by the pursuing vessel at very short notice;
- .4 every country is recommended to ensure that each national RCC, which may be contacted by RCCs from other countries, is capable at all times of communicating in English. Thus, at least one person with a satisfactory knowledge of the English language - both written and spoken - should always be on duty;
- .5 in order to minimize co-ordination problems and possible delays in cases when distress/safety messages related to a specific area are received by Coast Earth Stations and RCCs in other countries, it is recommended to arrange common meetings/seminars for key personnel from both areas for the exchange of views and to establish suitable procedures and actions in different types of situations. Consideration should also be given to arranging common exercises to verify that procedures and actions are effective;
- .6 if an attack is reported in an area covered by NAVTEX transmissions, a piracy/armed robbery attack warning with category "Important" or "Vital", as appropriate, should be transmitted whenever such warnings can be transmitted sufficiently early to enable ships to take precautions appropriate to preventing attacks. If an attack is reported in an area which is not covered by NAVTEX transmissions, a piracy/armed robbery attack warning should be transmitted as an EGC SafetyNET message through the INMARSAT system. In this respect, relevant authorities are recommended to make arrangements with one or more Coast Earth Station(s) covering relevant areas, so as to be registered as "information providers" (Ref. to MSC/Circ.805); and

- .7 those countries that have established, or which plan to establish, radar surveillance and/or VHF DF (direction finding) systems, are recommended to investigate the potential suitability of such facilities for anti-piracy/armed robbery purposes. If such facilities are judged to be suitable for such purposes, the facilities and procedures necessary for their rapid and efficient use should be established.

22 It is important that any response to an incident is well planned and executed, and that those involved should be as familiar as possible with a ship environment. Therefore those responsible for responding to acts of piracy or armed robbery of ships, whether at sea or in port, should be trained in the general layout and features of the types of ship most likely to be encountered. Shipowners should be encouraged to co-operate with the security forces by providing access to their ships for the necessary familiarization.

23 The coastal States should consider the use of suitably equipped helicopters and other suitable means in countering acts of piracy and armed robbery. Security forces should consider the use of modern night vision equipment and other applicable modern technology.

24 A local rule of the road amendment allowing ships under attack to flash or occult their "not under command" lights should be authorized in areas where pirate/armed robbery attacks are more common.

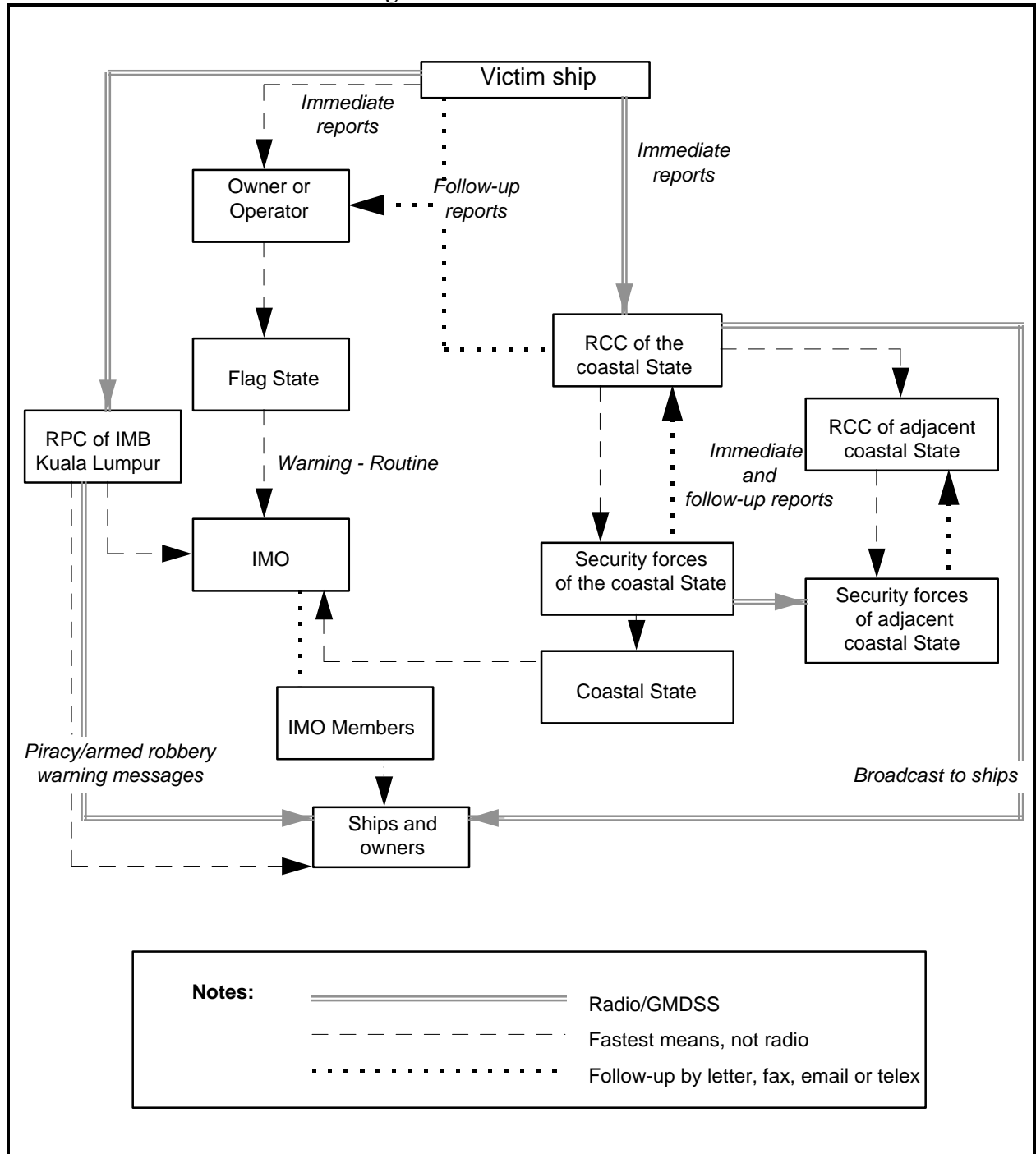
25 The States with adjacent coastal waters affected by pirates and armed robbers should develop or maintain co-ordinated patrols by both ships and aircraft.

26 Security forces and Governments should maintain close liaison with their counterparts in the neighbouring States to facilitate the apprehension and prosecution of criminals involved in such unlawful acts. Some countries have already a well established co-ordination which is also used for preventing and suppressing piracy and armed robbery.

27 RCC personnel should be instructed on the most efficient means of communicating reports on piracy and armed robbery, which they receive. Depending on the circumstances, this may require forwarding the reports to another RCC or coast radio station, notifying Security forces or patrol craft in the area and taking steps to have a broadcast warning issued or other suitable action taken.

STATISTICS, FLOW DIAGRAMS AND OTHER RELEVANT INFORMATION

Flow diagram for attacks in coastal waters



APPENDIX 2

"PHASES" RELATED TO VOYAGES IN PIRACY AND ARMED ROBBERY THREAT AREAS

Phase Symbol	Phase Description
A	Approaching a piracy/armed robbery threat area (1 hour prior to entering)
B	Entering a piracy/armed robbery threat area
C	Inside a piracy/armed robbery threat area, but no suspect piracy/armed robbery vessel detected
D	Inside a piracy/armed robbery threat area: suspect piracy/armed robbery vessel detected
E	Certainty that piracyarmed robbery will be attempted
F	Pirate/armed robbery vessel in proximity to, or in contact with, own ship
G	Pirates/armed robbers start attempts to enter ship
H	Pirates/armed robbers have succeeded in entering ship
I	Pirates/armed robbers have one or more of the ship's personnel in their control/custody
J	The pirates/armed robbers have gained access to the bridge or the master's office
K	The pirates/armed robbers have stolen property/money etc
L	The pirates/armed robbers start to disembark
M	The pirates/armed robbers have disembarked
N	The pirate/armed robbery vessel is no longer in contact with the ship
O	Own ship leaves the piracy/armed robbery threat area

APPENDIX 3

SHIPS' MESSAGE FORMATS

Report 1 - Initial message - Piracy/armed robbery attack alert

1 Ship's name and, callsign, IMO number, INMARSAT IDs (plus ocean region code) and MMSI

MAYDAY/DISTRESS ALERT (see note)

URGENCY SIGNAL

PIRACY/ARMED ROBBERY ATTACK

2 Ship's position (and time of position UTC)

Latitude	Longitude
Course Speed	KTS

3 Nature of event

Note: It is expected that this message will be a Distress Message because the ship or persons will be in grave or imminent danger when under attack. Where this is not the case, the word MAYDAY/DISTRESS ALERT is to be omitted.

Use of distress priority (3) in the INMARSAT system will not require MAYDAY/DISTRESS ALERT to be included.

Report 2 - Follow-up report - Piracy/armed robbery attack alert

1 Ship's name and, callsign, IMO number

2 Reference initial PIRACY/ARMED ROBBERY ALERT

3 Position of incident

Latitude	Longitude
Name of the area	

4 Details of incident, e.g.:

While sailing, at anchor or at berth?
Method of attack
Description/number of suspect craft
Number and brief description of pirates/robbers

What kind of weapons did the pirates/robbers carry ?
Any other information (e.g. language spoken)
Injuries to crew and passengers
Damage to ship (Which part of the ship was attacked?)
Brief details of stolen property/cargo
Action taken by the master and crew
Was incident reported to the coastal authority and to whom?
Action taken by the Coastal State

- 5 Last observed movements of pirate/suspect craft, e.g.:

Date/time/course/position/speed

- 6 Assistance required

- 7 Preferred communications with reporting ship, e.g.:

Appropriate Coast Radio Station
HF/MF/VHF
INMARSAT IDs (plus ocean region code)
MMSI

- 8 Date/time of report (UTC)

APPENDIX 4

**FORMAT FOR REPORTING TO IMO THROUGH MARITIME
ADMINISTRATIONS OR INTERNATIONAL ORGANIZATIONS**

- | | |
|----|---|
| 2* | Ship's name and IMO number |
| | Type of ship |
| | Flag |
| | Gross tonnage |
| 3 | Date and time |
| 4 | Latitude Longitude |
| | Name of the area** |
| | While sailing, at anchor or at berth? |
| 5 | Method of attack |
| | Description/number of suspect craft |
| | Number and brief description of pirates/robbers |
| | What kind of weapons did the pirates/robbers carry ? |
| | Any other information (e.g. language spoken) |
| 6 | Injuries to crew and passengers |
| | Damage to ship (Which part of the ship was attacked?) |
| | Brief details of stolen property/cargo |
| 7 | Action taken by the master and crew |
| 8 | Was incident reported to the coastal authority and to whom? |
| 9 | Reporting State or international organization |
| 10 | Action taken by the Coastal State |

* Corresponding to the column numbers in the annex to the IMO monthly circulars

** The following definition of piracy is contained in article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS):

“Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).”

APPENDIX 5

DRAFT* REGIONAL AGREEMENT ON CO-OPERATION IN PREVENTING AND SUPPRESSING ACTS OF PIRACY AND ARMED ROBBERY AGAINST SHIPS

Note: Due to different circumstances among States, this example agreement may be varied to meet specific situations.

Agreement between the Governments of _____, _____,
_____, _____, and _____

(Hereinafter, " the Parties");

Bearing in mind the complex nature of the problem of piracy and armed robbery against ships;

Having regard to the urgent need for international co-operation in preventing and suppressing piracy and armed robbery against ships;

Desiring to promote greater cooperation between the parties and thereby enhance their effectiveness in preventing and suppressing piracy and armed robbery against ships;

Being conscious of the fact that, in order to prevent and suppress piracy and armed robbery against ships effectively and efficiently, the active participation of all States affected is needed;

Taking into account that the Governments do not have sufficient technical and material resources to prevent and suppress piracy and armed robbery against ships independently;

Recognizing that piracy and armed robbery are international and transnational threats to seafarers, property and the environment; and conscious of the fact that the Parties are experiencing increased incidents of piracy and armed robbery within their maritime zones and adjoining international waters;

Have agreed as follows:

Definitions

For the purpose of this Agreement, unless expressly provided otherwise:

- 1 "Piracy" means those acts as defined in Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS), 1982.

* The present draft includes text in square brackets which was left to the discretion of the individual Governments.

- 2 "Armed robbery against ships" means [...].
- 3 "National waters [and airspace]" means the territorial sea and internal waters of the Parties [and the air space over those States].
- 4 "Law enforcement vessels" mean ships of the Parties clearly marked and identifiable as being on government non-commercial service and authorized to that effect, including any boat and aircraft embarked on such ships, aboard which law enforcement officials are embarked.
- [5 "Law enforcement aircraft" means aircraft of the Parties engaged in law enforcement operations or operations in support of law enforcement activities clearly marked and identifiable as being on non-commercial government service and authorized to that effect.]
- 5[6] "Liaison officer" means one or more law enforcement officials, including boarding teams, of one Party authorized to embark on a law enforcement vessel of another Party.
- 6[7] "Suspect vessel" means a vessel used for commercial or private purposes in respect of which there are reasonable grounds to suspect it is involved in piracy or armed robbery against ships.
- 7[8] "Incident Command System" means a regional system for operational/tactical response to acts of piracy and armed robbery against ships providing common terminology, modular organization, integrated communications, unified command structure, consolidated action plans, manageable span of control, designated incident facilities and comprehensive resource management.

Nature and scope of the Agreement

- 1 The Parties shall cooperate in preventing and suppressing piracy and armed robbery at sea to the fullest extent possible, consistent with available law enforcement resources and related priorities.
- 2 The Parties undertake to agree on procedures for improving intelligence sharing.

Operations in [and over] national waters

Operations to suppress piracy and armed robbery in the national waters of a Party are subject to the authority of that Party.

Programme for law enforcement officials aboard another Party's vessels

- 1 The Parties shall establish a law enforcement liaison officer programme among their law enforcement authorities. Each Party may designate a co-ordinator to organize its programme activities and to notify the other Parties of the types of vessels and officials involved in the programme.
- 2 The Parties may designate qualified law enforcement officials to act as law enforcement liaison officers.

- 3 Subject to the law of the Parties involved, these liaison officers may, in appropriate circumstances:
- .1 embark on the law enforcement vessels of other Parties;
 - .2 authorize the pursuit, by the law enforcement vessels on which they are embarked, of suspect vessels fleeing into the territorial waters of the liaison officer's Party;
 - .3 authorize the law enforcement vessels on which they are embarked to conduct patrols to suppress acts of armed robbery against ships in the liaison officer's Party's national waters; and
 - .4 enforce the laws of the Parties in national waters, or seaward there from in the exercise of the right of hot pursuit or otherwise in accordance with international law.
- 4 When a liaison officer is embarked on another Party's vessel, and the enforcement action being carried out is pursuant to the liaison officer's authority, any search or seizure of property, any detention of a person, and any use of force pursuant to this Agreement, whether or not involving weapons, shall be carried out by the liaison officer, except as follows:
- .1 crew members of the other Party's vessel may assist in any such action if expressly requested to do so by the liaison officer and only to the extent and in the manner requested. Such request may only be made, agreed to, and acted upon in accordance with the applicable laws and policies; and
 - .2 such crew members may use force in self-defense, in accordance with the applicable laws and policies.
- 5 Parties may only conduct operations to suppress piracy and armed robbery in the waters of another Party with the permission of that Party in any of the following circumstances:
- .1 an embarked liaison officer so authorizes;
 - .2 on those exceptional occasions when a suspect vessel, detected seaward of national waters, enters the national waters of another Party and no liaison officer is embarked in a law enforcement vessel, and no law enforcement vessel from the Party whose national waters have been entered by a suspect vessel is immediately available to investigate, the law enforcement vessel may follow the suspect vessel into national waters, in order to board the suspect vessel and secure the scene, while awaiting expeditious instructions and the arrival from law enforcement authorities of the Party in whose national waters the event took place;
 - .3 on those equally exceptional occasions when a suspect vessel is detected within a Party's national waters, and no liaison officer is embarked from that Party and no law enforcement vessel is immediately available to investigate from that Party, the law enforcement vessel from another Party may enter the national waters, in order to board the suspect vessel and secure the scene, while awaiting expeditious instructions from the law enforcement authorities and the arrival of law enforcement officials of the Party in whose national waters the event has occurred; and

- .4 Parties shall provide prior notice to the law enforcement authority of the Party in whose national waters the event took place of action to be taken under subparagraphs .2 and .3 of this paragraph, unless it is not operationally feasible to do so. In any case, notice of the action shall be provided to the relevant law enforcement authority without delay.
- [6 When aircraft of the Parties (hereafter referred to as "aircraft") are operating to suppress piracy and armed robbery against ships or supporting such operations, other Parties shall permit those aircraft:
- .1 to overfly the territory and waters of other Parties with due regard for the laws and regulations of those Parties for the flight and manoeuvre of aircraft, subject to paragraph 7 of this section; and
- .2 to land and remain in national airports, after receiving authorization from the minister of public security, on the occasions and for the time necessary for the proper conduct of operations deemed necessary under this Agreement.
- 7 The Parties shall, in the interest of flight safety, observe the following procedures for facilitating flights within the national airspace by law enforcement aircraft:
- .1 in the event of planned law enforcement operations, Parties shall provide reasonable notice and communication frequencies to the appropriate aviation authorities responsible for air traffic control of planned flights by its aircraft over national territory or waters;
- .2 in the event of unplanned operations, the Parties shall exchange information concerning the appropriate communication frequencies and other information pertinent to flight safety; and
- .3 any aircraft engaged in law enforcement operations or operations in support of law enforcement activities in accordance with this agreement shall comply with such air navigation and flight safety directions as may be required by pertinent aviation authorities, and with any written operating procedures developed for flight operations within their airspace under this Agreement.]

Operations seaward of the territorial sea

1 Whenever law enforcement officials of a Party encounter a suspect vessel flying the flag of another Party or claiming to be registered in the country of another Party, located seaward of any State's territorial sea, this Agreement constitutes the authorization of that Party for the boarding and search of the suspect vessel and the persons found on board by such officials. If evidence of piracy or armed robbery against ships is found, law enforcement officials may detain the vessel and persons on board pending expeditious disposition instructions from the Government of the flag State.

2 Except as expressly provided herein, this Agreement does not apply to or limit boardings of vessels seaward of any State's territorial sea, conducted by either Party in accordance with international law, whether based, *inter alia*, on the right of visit, the rendering of assistance to persons, ships, and property in distress or peril, the consent of the shipmaster, or an authorization from the flag State to take law enforcement action.

Jurisdiction over detained vessel

1 In all cases arising in national waters, or concerning vessels flying the flag of a Party seaward of any State's territorial sea, the Party whose flag is being flown by the suspect vessel shall have the primary right to exercise jurisdiction over a detained vessel, cargo and/or persons on board (including seizure, forfeiture, arrest, and prosecution), provided, however, that the Party may, subject to its constitution and laws, waive its primary right to exercise jurisdiction and authorize the enforcement of another Party's law against the vessel, cargo and/or persons on board.

2 Instructions as to the exercise of jurisdiction pursuant to paragraph 1 shall be given without delay.

Implementation

1 Operations to suppress piracy and armed robbery pursuant to this Agreement shall be carried out only against suspect vessels, including vessels without nationality, and vessels assimilated to vessels without nationality.

2 All Parties shall utilize the Incident Command System when operating in conjunction with another Party in an operation within the scope of this Agreement.

3 All Parties undertake to agree on uniform reporting criteria in order to ensure that an accurate assessment of the threat is developed. Furthermore, all Parties shall endeavour to ensure that reporting ships are not unduly detained for investigative purposes. A summary of reports to each Party shall be shared at least annually with the other Parties.

4 A Party conducting a boarding and search pursuant to this Agreement shall promptly notify the flag State of the results thereof. The relevant Party shall timely report to the other Party, consistent with its laws, on the status of all investigations, prosecutions and judicial proceedings resulting from enforcement action taken pursuant to this Agreement where evidence of piracy and armed robbery has been found.

5 Each Party shall ensure that its law enforcement officials, when conducting boardings and searches [and air interception] activities pursuant to this Agreement, act in accordance with the applicable national laws and policies of that Party and with the applicable international law and accepted international practices.

6 Boardings and searches pursuant to this Agreement shall be carried out by law enforcement officials from law enforcement vessels [or aircraft]. The boarding and search teams may operate from such ships [and aircraft] of the relevant Parties, and seaward of the territorial sea of any State, from such ships of other Parties as may be agreed upon by the Parties. The boarding and search team may carry standard law enforcement small arms.

[7 While conducting air intercept activities pursuant to this Agreement, the Parties shall not endanger the lives of persons on board and the safety of civil aircraft.]

7[8] All use of force pursuant to this Agreement shall be in strict accordance with the applicable laws and policies and shall in all cases be the minimum reasonably necessary under the circumstances. Nothing in this Agreement shall impair the exercise of the inherent right of self-defense by law enforcement or other officials of either Party.

8[9] When carrying out operations pursuant to this Agreement, the Parties shall take due account of the possible advantage of conducting boarding and search operations in safer conditions at the closest port of a Party to minimize any prejudice to the legitimate commercial activities of the suspect vessel, or its flag State or any other interested State; the need not to delay unduly the suspect vessel; the need not to endanger the safety of life at sea without endangering the safety of the law enforcement officials or their vessels [or aircraft]; and the need not to endanger the security of the suspect vessel or its cargo.

9[10] To facilitate implementation of this Agreement, each Party shall ensure the Parties are fully informed of its respective applicable laws and policies, particularly those pertaining to the use of force. Each Party shall ensure that all of its law enforcement officials are knowledgeable concerning the applicable laws and policies of the other Parties.

10[11] Assets seized in consequence of any operation undertaken in the national waters of a Party pursuant to this Agreement shall be disposed of in accordance with the laws of the Party. Assets seized in consequence of any operation undertaken seaward of the territorial sea of a Party pursuant to this Agreement shall be disposed of in accordance with the laws of the seizing Party. To the extent permitted by its laws and upon such terms as it deems appropriate, a Party may, in any case, transfer forfeited assets or proceeds of their sale to another Party. Each transfer generally will reflect the contribution of other Parties to facilitating or effecting the forfeiture of such assets or proceeds.

11[12] The law enforcement authority of one Party (the "first Party") may request, and the law enforcement authority of another Party may authorize, law enforcement officials of the other Party to provide technical assistance to law enforcement officials of the first Party in their boarding and investigation of suspect vessels located in the territory or waters of the first Party.

12[13] Any injury to or loss of life of a law enforcement official of a Party shall normally be remedied in accordance with the laws of that Party. Any other claim submitted for damage, injury, death or loss resulting from an operation carried out under this Agreement shall be processed, considered, and if merited, resolved in favour of the claimant by the Party whose officials conducted the operation, in accordance with the domestic law of that Party, and in a manner consistent with international law. If any loss, injury or death is suffered as a result of any action taken by the law enforcement or other officials of one Party in contravention of this Agreement, or any improper or unreasonable action is taken by a Party pursuant thereto, the relevant Parties shall, without prejudice to any other legal rights which may be available, consult at the request of a Party to resolve the matter and decide any questions relating to compensation.

13[14] Disputes arising from the interpretation or implementation of this Agreement shall be settled by mutual agreement of the Parties.

14[15] The Parties agree to consult, on at least an annual basis, to evaluate the implementation of this Agreement and to consider enhancing its effectiveness, including the preparation of amendments to this Agreement that take into account increased operational capacity of the law enforcement authorities and officials. In case a difficulty arises concerning the operation of this Agreement, any Party may request consultations with another Party to resolve the matter.

15[16] Nothing in this Agreement is intended to alter the rights and privileges due any individual in any legal proceeding.

16[17] Nothing in this Agreement shall prejudice the position of any Party with regard to the international law of the sea.

Entry into force and duration

1 [Entry into force]

2 [Denunciation]

3 This Agreement shall continue to apply after termination with respect to any administrative or judicial proceedings arising out of actions taken pursuant to this Agreement during the time that it was in force.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at , this day of



Ref. T1/13.01

MSC/Circ.623/Rev.3
29 May 2002

PIRACY AND ARMED ROBBERY AGAINST SHIPS

Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships

- 1 The Maritime Safety Committee, at its seventy-fifth session (15 to 24 May 2002), approved a revised MSC/Circ.623/Rev.2 (Guidance to shipowners and ship operators, shipmasters and crews for preventing and suppressing acts of piracy and armed robbery against ships) as given at annex.
- 2 The revision was carried out on the basis of the outcome of COMSAR 6 to make RCCs and others concerned aware of the dangers in alerting pirates/terrorists that a distress alert or other communication has been transmitted by the affected ship following a piracy/terrorist alert.
- 3 Member Governments and organizations in consultative status with IMO are recommended to bring this circular to the attention of shipowners, ship operators, shipping companies, shipmasters and crews and all other parties concerned.
- 4 This circular revokes MSC/Circ.623/Rev.2.

ANNEX

GUIDANCE TO SHIPOWNERS AND SHIP OPERATORS, SHIPMASTERS AND CREWS ON PREVENTING AND SUPPRESSING ACTS OF PIRACY* AND ARMED ROBBERY AGAINST SHIPS

Introduction

1 This circular aims at bringing to the attention of shipowners, masters and crews the precautions to be taken to reduce the risks of piracy on the high seas and armed robbery against ships at anchor, off ports or when underway through a coastal State's territorial waters. It outlines steps that should be taken to reduce the risk of such attacks, possible responses to them and the vital need to report attacks, both successful and unsuccessful, to the authorities of the relevant coastal State and to the ships' own maritime Administration. Such reports are to be made as soon as possible, to enable necessary action to be taken.

2 These recommendations have been culled from a number of sources. Where conflicting advice has been apparent, the reason for choosing the recommended course has been stated.

The pirates/robbers objective

3 In addition to hijacking of ships, and the theft of cargo, the main targets of the South East Asian attacker appear to be cash in the ship's safe, crew possessions and any other portable ship's equipment, even including coils of rope. In South America some piracy and armed robbery attacks are drug related. When there has been evidence of tampering with containers, it has been suggested that the raiders may initially have gained access when the ship was berthed in port and then gone over the side, with what they could carry. Thorough checking of ships' compartments and securing before leaving ports is therefore recommended.

Reducing the temptation for piracy and armed robbery

Cash in the ship's safe

4 The belief that large sums of cash are carried in the master's safe attracts attackers. On several occasions this belief has been justified and substantial sums have been stolen. While carrying cash may sometimes be necessary to meet operational needs and crew requirements and to overcome exchange

* The following definition of piracy is contained in article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS):

“Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).”

control restrictions in some States, it acts as a magnet for attackers and they will intimidate the master or crew members until the locations have been revealed. Shipowners should consider ways of eliminating the need to carry large sums of cash on board ship. When this need arises because of exchange control restrictions imposed by States, the matter should be referred to the ship's maritime Administration to consider if representations should be made to encourage a more flexible approach as part of the international response to eliminate attacks by pirates and armed robbers.

Discretion by masters and members of the crew

5 Masters should bear in mind the possibility that attackers are monitoring ship-to-shore communications and using intercepted information to select their targets. Caution should, therefore, be exercised when transmitting information on cargo or valuables on board by radio in areas where attacks occur.

6 Members of the crew going ashore in ports in affected areas should be advised not to discuss the voyage or cargo particulars with persons unconnected with the ship's business.

Smaller crews

7 The smaller crew numbers now found on board ships also favour the attacker. A small crew engaged in ensuring the safe navigation of their ship through congested or confined waters will have the additional onerous task of maintaining high levels of security surveillance for prolonged periods. Shipowners will wish to consider enhancing security watches if their ship is in waters or at anchor off ports, where attacks occur. Shipowners will wish to consider providing appropriate surveillance and detection equipment to aid their crews and protect their ships.

Recommended practices

8 The recommended practices outlined below are based on reports of incidents, advice published by commercial organizations and measures developed to enhance ship security. The extent to which the recommendations are followed or applied are matters solely for the owners or master of ships operating in areas where attacks occur. The shipping industry would also benefit from consulting other existing recommendations*.

9 The recommended actions are defined as phases related to any voyage in a piracy and armed robbery threat area. The phases define the main stages in all situations of non-piracy/armed robbery, attempted piracy/armed robbery and confirmed piracy/armed robbery. Depending on the development of any one situation, they may or may not materialize.

* For example, United Kingdom Marine Guidance Note 75, BIMCO publication "The Ship Master's Security Manual" (July 1998), ICS/ISF Pirates and Armed Robbers - A Master's Guide (Third Edition 1999), IMB Special Report on Piracy and Armed Robbery (March 1998)

The pre-piracy/armed robbery phase - Ship security plan

10 All ships expected to operate in waters where attacks occur should have a ship security plan** which pertains to piracy and armed robbery against ships. The ship security plan should be prepared having regard to the risks that may be faced, the crew members available, their capability and training, the ability to establish secure areas on board ship and the surveillance and detection equipment that has been provided. The plan should, *inter alia*, cover:

- .1 the need for enhanced surveillance and the use of lighting, surveillance and detection equipment;
- .2 crew responses, if a potential attack is detected or an attack is underway;
- .3 the radio alarm procedures to be followed; and
- .4 the reports to be made after an attack or an **attempted attack**.

Ship security plans should ensure that masters and crews are made fully aware of the risks involved during attacks by pirates or armed robbers. In particular, they should address the dangers that may arise if a crew adopts an aggressive response to an attack. Early detection of a possible attack is the **most effective deterrent**. Aggressive responses, once an attack is underway and, in particular, once the attackers have boarded the ship, could significantly increase the risk to the ship and those on board.

11 In accordance with the ship security plan, all doors allowing access to the bridge, engine room, steering gear compartments, officers' cabins and crew accommodation should be secured and controlled in affected areas and should be regularly inspected. The intention should be to establish secure areas which attackers will find difficult to penetrate.

12 It is important that any response to an incident is well planned and executed, and those involved should be as familiar as possible with a ship environment. Therefore those responsible within the security forces for responding to acts of piracy and armed robbery against ships, whether at sea or in port, should be trained in the general layout and features of the types of ships most likely to be encountered and shipowners should co-operate with the security forces in providing access to their ships to allow the necessary on board familiarization.

Routing and delaying anchoring

13 If at all possible, ships should be routed away from areas where attacks are known to have taken place and, in particular, seek to avoid bottle-necks. If ships are approaching ports where attacks have taken place on ships at anchor, rather than ships underway, and it is known that the ship will have to anchor off port for some time, consideration should be given to delaying anchoring by slow steaming or longer routing to remain well off shore thereby reducing the period during which the ship will be at risk. Contact with port authorities should ensure that berthing priorities are not affected. Charter party agreements should

** Possible guidance can be found in MSC/Circ.443

recognize that ships may need to delay arrival at ports where attacks occur either when no berth is available for the ship or offshore loading or unloading will be delayed for a protracted period.

Practice the implementation of the ship security plan

14 Prior to entering an area, where attacks have occurred, the ship's crew should have practised and perfected the procedures set down in the ship security plan. Alarm signals and procedures should have been thoroughly practised. If instructions are to be given over the ship's address systems or personal radios, they must be clearly understood by those who may not have fully mastered the language in which the instructions will be given.

15 It cannot be emphasized enough that all possible access points to the ship and any key and secure areas on it must be secured or controlled in port, at anchor and when underway in affected areas. Crews should be trained in the use of any additional surveillance or detection equipment installed on the ship. Planning and training must be on the basis that an attack will take place and not in the belief that with some luck it will not happen. Indications to attackers that the ship has an alert and trained crew implementing a ship security plan will help to deter them from attacking the ship.

Precautions at anchor or in port

16 In areas where attacks occur it is important to limit, record and control those who are allowed access to a ship when in port or at anchor. Photographing those who board the ship can be a useful deterrent or assist the identification of attackers who may have had access to the ship prior to their attack. Film need only be developed in the event of a subsequent attack. Given that attackers may use knowledge of cargo manifests to select their targets, every effort should be made to limit the circulation of documents which give information on the cargoes on board or their location on the ship.

17 Prior to leaving port the ship should be thoroughly searched and all doors or access points secured or controlled. This is particularly important in the case of the bridge, engine room, steering space and other vulnerable areas. Doors and access points should be regularly checked thereafter. The means of controlling doors or access points which would need to be used in the event of an onboard emergency will need careful consideration. Ship or crew safety should not be compromised.

18 Security guards employed in port or at anchorage on different ships should be in communication with each other and the port authorities during their watch. The responsibility for vetting such guards lies with the security personnel companies, which themselves should be vetted by the appropriate authorities.

Watchkeeping and vigilance

19 Maintaining vigilance is essential. All too often the first indication of an attack has been when the attackers appear on the bridge or in the master's cabin. Advance warning of a possible attack will give the opportunity to sound alarms, alert other ships and the coastal authorities, illuminate the suspect craft, undertake evasive manoeuvring or initiate other response procedures. Signs that the ship is aware it is being approached can deter attackers.

20 When ships are in, or approaching areas where attacks take place, bridge watches and look-outs should be augmented. Additional watches on the stern or covering radar "blind spots" should be considered. Companies should consider investing in low-light binoculars for bridge staff and look-outs. Radar should be constantly manned but it may be difficult to detect low profile fast moving craft on ship's radars. A yacht radar mounted on the stern may provide additional radar cover capable of detecting small craft approaching from astern when the ship is underway. Use of an appropriately positioned yacht radar when the ship is at anchor may also provide warning of the close approach of small craft.

21 It is particularly important to maintain a radar and visual watch for craft which may be trailing the ship when underway but which could close in quickly when mounting an attack. Small craft which appear to be matching the speed of the ship on a parallel or following course should always be treated with suspicion. When a suspect craft has been noticed, it is important that an effective all-round watch is maintained for fear the first craft is a decoy with the intention to board the ship from a second craft while attention is focused on the first.

22 Companies owning ships that frequently visit areas where attacks occur should consider the purchase and use of more sophisticated visual and electronic devices in order to augment both radar and visual watch capability against attackers' craft at night, thereby improving the prospects of obtaining an early warning of a possible attack. In particular, the provision of night vision devices, small radars to cover the blind stern arcs, closed circuit television and physical devices, such as barbed wire, may be considered. In certain circumstances non-lethal weapons may also be appropriate. Infrared detection and alerting equipment may also be utilized.

Communications procedures

23 The master should ensure that an authorized person responsible for communications is on duty at all time when the ship is in, or approaching, areas where attacks occur.

24 Prior to entering areas where attacks have occurred and where the GMDSS installation on board does not have facility for automatically updating the "ship position" data from an associated electronic navigation aid, it is strongly recommended to enter the ship's position at regular intervals into the appropriate communications equipment manually. It is recommended that owners initiate the GMDSS INMARSAT "C" alarm programme before entering affected areas for use when appropriate (MSC/Circ.805).

Radio watchkeeping and responses

25 A constant radio watch should be maintained with the appropriate shore or naval authorities when in areas where attacks have occurred. Continuous watch should also be maintained on all distress and safety frequencies, particularly VHF Channel 16 and 2,182 kHz, as well as in any other channels or frequencies which could have been determined by local authorities for certain areas. Ships should also ensure all maritime safety information broadcasts for the area monitored. As it is anticipated that INMARSAT's enhanced group calling system (EGC) will normally be used for such broadcasts using the SafetyNET service, owners should ensure a suitably configured EGC receiver is continuously available when in, or approaching areas where there is risk of attack. Owners should also consider fitting a dedicated receiver for this purpose, i.e. one that is not incorporated into a Ship Earth Station used for commercial purposes to ensure no urgent broadcasts are missed.

26 The International Maritime Organization (IMO) recommends in MSC/Circ.597, issued in August 1992, that reports concerning attacks by pirates or armed robbers should be made to the relevant Rescue Co-ordination Centre (RCC) for the area. MSC/Circ.597 also recommends that Governments should arrange for the RCCs to be able to pass reports of attacks to the appropriate security forces.

27 If suspicious movements are identified which may result in an imminent attack, the ship is advised to contact the relevant RCC or with the radio stations which could have been recommended by local authorities for certain areas. Where the master believes these movements could constitute a direct danger to navigation, consideration should be given to broadcasting an "All stations (CQ)" "danger message" as a warning to other ships in the vicinity as well as advising the appropriate RCC. A danger message should be transmitted in plain language on a VHF working frequency following an announcement on VHF Channel 70 using the "safety" priority. All such measures shall be preceded by the safety signal (Sécurité).

28 When, in his/her opinion, there is conclusive evidence that the safety of the ship is threatened, the master should immediately contact the relevant RCC or, in certain areas, with the radio stations which could have been recommended by local authorities, and if considered appropriate, authorize broadcast of an "All Stations" "Urgent Message" on VHF Channel 16, 2,182 kHz or any other radiocommunications service he/she considers appropriate or which could have been recommended by local authorities; e.g. INMARSAT, etc. All such messages shall be preceded by the appropriate Urgency signal (PAN PAN) and/or a DSC call on VHF Channel 70 and/or 2,187.5 kHz using the "all ships urgency" category. If the Urgency signal has been used and an attack does not, in fact, develop, the ship should cancel the message as soon as it knows that action is no longer necessary. This message of cancellation should likewise be addressed to "all stations"

29 Should an attack occur and, in the opinion of the master, the ship or crew are in grave and imminent danger requiring immediate assistance, he/she should immediately authorize the broadcasting of a distress message, preceded by the appropriate distress alerts (MAYDAY, DSC, etc.), using all available radiocommunications systems. To minimize delays, if using a ship earth station, ships should ensure the coast earth station associated with the RCC is used.

30 The ship may be able to send a covert piracy/terrorist alert to an RCC. However, as pirates/terrorists may be on board the ship and within audible range of the communication equipment, when the RCC sends an acknowledgement of receipt and attempts to establish communication, they could be alerted to the fact that a piracy/terrorist alert has been transmitted. This knowledge may serve to further endanger the lives of the crew on board the ship. RCCs and others should, therefore, be aware of the danger of unwillingly alerting the pirates/terrorists that a distress alert or other communication has been transmitted by the ship.

31 Masters should bear in mind that the distress signal is provided for use only in case of **imminent** danger and its use for less urgent purposes might result in insufficient attention being paid to calls from ships really in need of immediate assistance. Care and discretion must be employed in its use, to prevent its devaluation in the future. Where the transmission of the Distress signal is not fully justified, use should be made of the Urgency signal. The Urgency signal has priority over all communications other than distress.

Standard ships' message formats

32 The standard ships' message formats given in appendix 2 should be used for all piracy/armed robbery initial and follow-up alert reports.

Lighting

33 Ships should use the maximum lighting available consistent with safe navigation, having regard in particular to the provisions of Rule 20(b) of the 1972 Collision Regulations. Bow and overside lights should be left on if it can be done without endangering navigation. Ships must not keep on deck lights when underway, as it may lead other ships to assume the ship is at anchor. Wide beam floods could illuminate the area astern of the ship. Signal projector lights can be used systematically to probe for suspect craft using the radar guidance if possible. So far as is practicable crew members on duty outside the ship's secure areas when in port or at anchor should avail themselves of shadow and avoid being silhouetted by deck lights as this may make them targets for seizure by approaching attackers.

34 It has been suggested that ships should travel blacked out except for mandatory navigation lights. This may prevent attackers establishing points of reference when approaching a ship. In addition, turning on the ship's lights as attackers approach could alert them that they have been seen, dazzle them and encourage them to desist. It is difficult, however, to maintain full blackout on a merchant ship. The effectiveness of this approach will ultimately depend in part on the level of moonlight, but primarily on the vigilance of the ship's crew. While suddenly turning on the ship's light may alarm or dazzle attackers, it could also place the crew at a disadvantage at a crucial point through temporary loss of their night vision. On balance, this approach cannot be recommended.

Secure areas

35 In accordance with the ship security plan, all doors allowing access to the bridge, engine room, steering gear compartments, officers' cabins and crew accommodation should be secured and controlled at all times and should be regularly inspected. The intention should be to establish secure areas which attackers will find difficult to penetrate. Consideration should be given to the installation of special access control systems to the ship's secure areas. Ports, scuttles and windows which could provide access to such secure areas should be securely closed and should have laminated glass, if possible. Deadlights should be shut and clipped tightly. The internal doors within secure areas which give immediate access to key areas such as the bridge, radio room, engine room and master's cabin, should be strengthened and have special access control systems and automatic alarms.

36 Securing doors providing access to, and egress from, secure or key areas may give rise to concern over safety in the event of an accident. In any situation where there is a conflict between safety and security, the safety requirements should be paramount. Nevertheless, attempts should be made to incorporate appropriate safety provisions while allowing accesses and exits to be secured or controlled.

37 Owners may wish to consider providing closed-circuit television (CCTV) coverage and recording of the main access points to the ship's secure areas, the corridors approaching the entrances to key areas and the bridge.

38 To prevent seizure of individual crew members by attackers - seizure and threatening a crew member is one of the more common means of attackers gaining control over a ship - all crew members not engaged on essential outside duties should remain within a secure area during the hours of darkness. Those whose duties necessarily involve working outside such areas at night should remain in constant communication with the bridge and should have practised using alternative routes to return to a secure area in the event of an attack. Crew members who fear they may not be able to return to a secure area during an attack, should select places in advance in which they can take temporary refuge.

39 There should be designated muster areas within the ship's secure areas where the crew can muster during an attack and communicate their location and numbers to the bridge.

Alarms

40 Alarm signals, including the ship's whistle, should be sounded on the approach of attackers. Alarms and signs of response can discourage attackers. Alarm signals or announcements which provide an indication at the point at which the attacker may board, or have boarded, may help crew members in exposed locations select the most appropriate route to return to a secure area.

Use of distress flares

41 The only flares authorized for carriage on board ship are intended for use if the ship is in distress and is in need of immediate assistance. As with the unwarranted use of the Distress signal on the radio (see paragraph 24 above), use of distress flares simply to alert shipping rather than to indicate that the ship is in grave and imminent danger may reduce their effect in the situations in which they are intended to be used and responded to. Radio transmissions should be used to alert shipping of the risk of attacks rather than distress flares. Distress flares should only be used when the master considers that the attackers' actions are putting his/her ship in imminent danger.

Evasive manoeuvring and use of hoses

42 Provided that navigational safety allows, masters should consider "riding off" attackers craft by heavy wheel movements as they approach. The effect of the bow wave and wash may deter would-be attackers and make it difficult for them to attach poles or grappling irons to the ship. Manoeuvres of this kind should not be used in confined or congested waters or close inshore or by ships constrained by their draught in the confined deep water routes found, for example, in the Malacca and Singapore Straits.

43 The use of water hoses should also be considered though they may be difficult to train if evasive manoeuvring is also taking place. Water pressures of 80 lb per square inch and above have deterred and repulsed attackers. Not only does the attacker have to fight against the jet of water but the flow may swamp his/her boat and damage engines and electrical systems. Special fittings for training hoses could be considered which would also provide protection for the hose operator. A number of spare fire hoses could be rigged and tied down to be pressurized at short notice if a potential attack is detected.

44 Employing evasive manoeuvres and hoses must rest on a determination to successfully deter attackers or to delay their boarding to allow all crew members to gain the sanctuary of secure areas. Continued heavy wheel movements with attackers on board may lessen their confidence that they will be able to return safely to their craft and may persuade them to disembark quickly. However, responses of this

kind could lead to reprisals by the attackers if they seize crew members and should not be engaged in unless the master is convinced he can use them to advantage and without risk to those on board. They should not be used if the attackers have already seized crew members.

Firearms

45 The carrying and use of firearms for personal protection or protection of a ship is strongly discouraged.

46 Carriage of arms on board ship may encourage attackers to carry firearms thereby escalating an already dangerous situation, and any firearms on board may themselves become an attractive target for an attacker. The use of firearms requires special training and aptitudes and the risk of accidents with firearms carried on board ship is great. In some jurisdictions, killing a national may have unforeseen consequences even for a person who believes he has acted in self defence.

The phases of suspected or attempted piracy/armed robbery attack

Suspected piracy/armed robbery vessel detected

47 Early detection of suspected attacks must be the first line of defence. If the vigilance and surveillance has been successful, a pirate/armed robbery vessel will be detected early. This is the stage at which the security forces of the nearest littoral or coastal State must be informed through the RCC, using the ships' message format contained in appendix 2. The ship's crew should be warned and, if not already in their defensive positions, they should move to them. Evasive manoeuvres and hoses should be vigorously employed as detailed in the preparation phase.

Being certain that piracy/armed robbery will be attempted

48 If not already in touch with the security forces of the littoral coastal State, efforts should be made to establish contact. Crew preparations should be completed and, where a local rule of the road allows ships under attack to do so, a combination of sound and light signals should be made to warn other ships in the vicinity that an attack is about to take place. Vigorous manoeuvring should be continued and maximum speed should be sustained if navigation conditions permit.

Pirate/armed robbery vessel in proximity to, or in contact with, own ship

49 Vigorous use of hoses in the boarding area should be continued. It may be possible to cast off grappling hooks and poles, provided the ship's crew are not put to unnecessary danger.

Pirates/armed robbers start to board ship

50 Timing during this phase will be critical and as soon as it is appreciated that a boarding is inevitable all crew should be ordered to seek their secure positions.

Pirates/armed robbers have succeeded in entering ship

51 Early detection of potential attacks must be the first line of defence, action to prevent the attackers actually boarding the second, but there will be incidents when attackers succeed in boarding a ship. The majority of pirates and armed robbers are opportunists seeking an easy target and time may not be on their side, particularly if the crew are aware they are on board and are raising the alarm. However, the attackers may seek to compensate for the pressure of time they face by escalating their threats or the violence they employ.

When attackers are on board the actions of the master and crew should be aimed at:

- .1 securing the greatest level of safety for those on board the ship;
- .2 seeking to ensure that the crew remain in control of the navigation of the ship; and
- .3 securing the earliest possible departure of the attackers from the ship.

52 The options available to the master and crew will depend on the extent to which the attackers have secured control of the ship, e.g. by having gained access to the bridge or engine room, or by seizing crew members who they can threaten, to force the master or crew to comply with their wishes. However, even if the crew are all safely within secure areas, the master will always have to consider the risk to the ship the attackers could cause outside those areas, e.g. by using firebombs to start fires on a tanker or chemical carrier.

53 If the master is certain that all his/her crew are within secure areas and that the attackers cannot gain access or by their actions outside the secure areas they do not place the entire ship at imminent risk, then he/she may consider undertaking evasive manoeuvres of the type referred to above to encourage the attackers to return to their craft.

54 The possibility of a sortie by a well-organized crew has, in the past, successfully persuaded attackers to leave a ship but the use of this tactic is only appropriate if it can be undertaken at no risk to the crew. For an action like this to be attempted the master must have clear knowledge of where the attackers are on the ship, that they are not carrying firearms or other potentially lethal weapons and that the number of crew involved significantly outnumbers the attackers they will face. If a sortie party can use water hoses, they stand an increased chance of success. The intention should be to encourage the attackers back to their craft. Crew members should not seek to come between the attackers and their craft nor should they seek to capture attackers as to do so may increase the resistance the attackers offer which will, in turn, increase the risk faced by members of the sortie party. Once outside the secure area, the sortie party should always stay together. Pursuit of an individual attacker by a lone crew member may be attractive but if it results in the crew member being isolated and seized by the attackers, the advantage turns to the attackers. Crew members should operate together and remain in constant communication with the bridge and should be recalled if their line of withdrawal to a secure area is threatened.

55 If the crew do apprehend an attacker, he/she should be placed in secure confinement and well cared for. Arrangements should be made to transfer him/her to the custody of officers of the security forces of a coastal State at the earliest possible opportunity. Any evidence relating to this activities should also be handed over to the authorities who take him/her into custody.

The pirates/armed robbers begin to gain control and take one or more of the ship's crew into their custody

56 If the attackers have gained control of the engine room or bridge, have seized crew members or can pose an imminent threat to the safety of a ship, the master or officer in charge should remain calm and, if possible, seek to negotiate with the attackers with the intention of maintaining the crew's control over the navigation of the ship, the safe return of any hostages they may hold and the early departure of the attackers from the ship. There will be many circumstances when compliance with the attackers' demands will be the only safe alternative and when resistance or obstruction of any kind could be both futile and dangerous.

57 In the event of attackers gaining temporary control of the ship, crew members should, if it is safe and practicable, leave Close Circuit Television (CCTV) records running.

58 As there have been occasions when entire crews have been locked up, consideration should be given to secreting equipment within areas in which the crew could be detained to facilitate their early escape.

The pirates/armed robbers have stolen property/money, etc.

59 At this stage it is essential that the pirates/armed robbers are assured that they have been given everything they demand and a strong reassurance that nothing has been secreted may persuade the pirates/armed robbers to leave.

The pirates/armed robbers start to disembark from the ship

60 If the crew are in their secure positions, it would be unwise of them to leave this security until it is confirmed that the pirates/armed robbers have left the ship.

The pirates/armed robbers have disembarked from the ship

61 A pre-arranged signal on the ship's siren will alert the crew to the "all clear".

Action after an attack and reporting incidents

62 Immediately after securing the safety of the ship and crew a post attack report (Follow-up report, as shown in Ships' message formats in appendix 2) should be made to the relevant RCC and, through them, to the security forces of the coastal State concerned. As well as information on the identity and location of the ship, any injuries to crew members or damage to the ship should be reported as should the direction in which the attackers departed together with brief details of their numbers and, if possible, a description of their craft. If the crew have apprehended an attacker, that should also be reported in this report.

63 If an attack has resulted in the death of, or serious injury to, any person on board the ship or serious damage to the ship itself, an immediate report should also be sent to the ship's maritime Administration. In any event a report of an attack is vital if follow-up action is to be taken by the ship's maritime Administration.

64 Any CCTV or other recording of the incident should be secured. If practicable, areas that have been damaged or rifled should be secured and remain untouched by crew members pending possible forensic examination by the security forces of a coastal State. Crew members who came into contact with the attackers should be asked to prepare an individual report on their experience noting, in particular, any distinguishing features which could help subsequent identification of the attackers. A full inventory, including a description of any personal possessions or equipment taken, with serial numbers when known, should also be prepared.

65 As soon as possible after the incident, a fuller report should be transmitted to the authorities of the coastal State in whose waters the attack occurred or, if on the high seas, to the authorities of the nearest coastal State. Due and serious consideration should be given to complying with any request made by the competent authorities of the coastal State to allow officers of the security forces to board the ship, take statements from crew members and undertake forensic and other investigations. Copies of any CCTV recordings, photographs, etc. should be provided if they are available.

66 Ships should take the necessary precautions, and implement the necessary procedures to ensure rapid reporting of any case of attack or attempted attack to the authorities in the relevant coastal States to enhance the possibility of security forces apprehending the attackers.

67 Any report transmitted to a coastal State should also be transmitted to the ship's maritime Administration at the earliest opportunity. A complete report of the incident, including details of any follow-up action that was taken or difficulties that may have been experienced, should eventually be submitted to the ship's maritime Administration. The report received by maritime Administrations may be used in any diplomatic approaches made by the flag State to the Government of the coastal State in which the incident occurred. This will also provide the basis for the report to IMO.

68 The format required for reports to IMO through maritime Administrations or international organizations is attached at appendix 4. Indeed, at present the lack of adequate and accurate reporting of attacks is directly affecting the ability to secure governmental and international action. Reports may also contribute to future refining and updating any advice that might be issued to ships.

69 Reports to the RCC, coastal State and the ship's maritime Administration should also be made if an attack has been unsuccessful.

70 Using RCCs, as recommended by IMO in MSC/Circ.597, will eliminate communication difficulties.

On leaving piracy/armed robbery threat areas

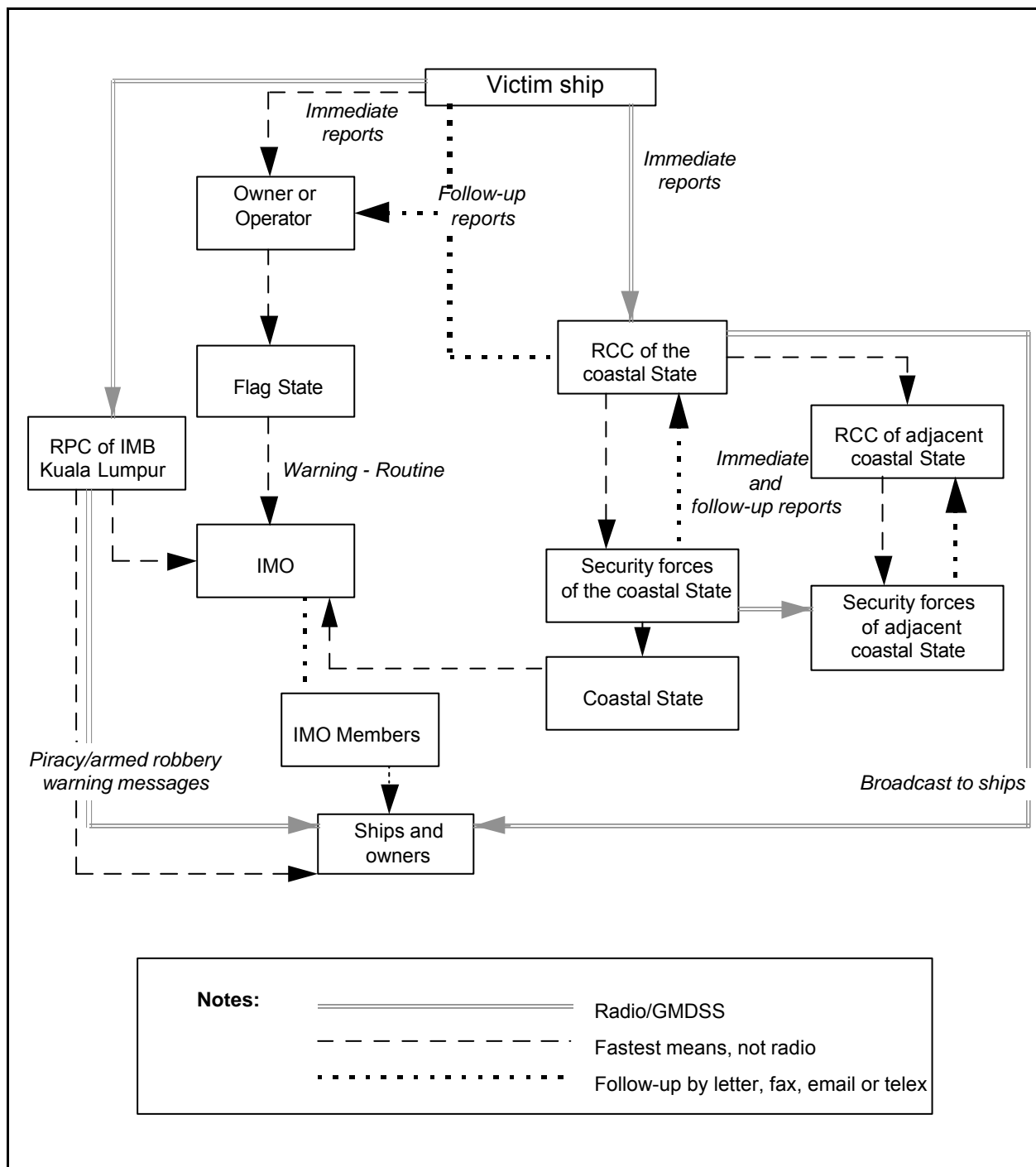
71 On leaving piracy/armed robbery threat areas, shipmasters should make certain that those spaces that need to be unlocked for safety reasons are unlocked, unrig hoses and revert to normal watchkeeping/lighting.

72 A summary of the piracy/armed robbery phases and how they may, or may not, develop is given in appendix 3.

APPENDIX 1

STATISTICS, FLOW DIAGRAMS AND OTHER RELEVANT INFORMATION

Flow diagram for attacks in coastal waters



APPENDIX 2

SHIPS' MESSAGE FORMATS

Report 1 - Initial message - Piracy/armed robbery attack alert

- 1 Ship's name and, callsign, IMO number, INMARSAT IDs (plus ocean region code) and MMSI

MAYDAY/DISTRESS ALERT (see note)

URGENCY SIGNAL

PIRACY/ARMED ROBBERY ATTACK
- 2 Ship's position (and time of position UTC)

Latitude	Longitude
Course Speed	KTS
- 3 Nature of event

Note: It is expected that this message will be a Distress Message because the ship or persons will be in grave or imminent danger when under attack. Where this is not the case, the word MAYDAY/DISTRESS ALERT is to be omitted.

Use of distress priority (3) in the INMARSAT system will not require MAYDAY/DISTRESS ALERT to be included.

Report 2 - Follow-up report - Piracy/armed robbery attack alert

- 1 Ship's name and, callsign, IMO number
- 2 Reference initial PIRACY/ARMED ROBBERY ALERT
- 3 Position of incident

Latitude	Longitude
----------	-----------

 Name of the area
- 4 Details of incident, e.g.:
 - While sailing, at anchor or at berth?
 - Method of attack
 - Description/number of suspect craft
 - Number and brief description of pirates/robbers
 - What kind of weapons did the pirates/robbers carry ?
 - Any other information (e.g. language spoken)
 - Injuries to crew and passengers
 - Damage to ship (Which part of the ship was attacked?)
 - Brief details of stolen property/cargo
 - Action taken by the master and crew

Was incident reported to the coastal authority and to whom?

Action taken by the Coastal State

5 Last observed movements of pirate/suspect craft, e.g.:

Date/time/course/position/speed

6 Assistance required

7 Preferred communications with reporting ship, e.g.:

Appropriate Coast Radio Station

HF/MF/VHF

INMARSAT IDs (plus ocean region code)

MMSI

8 Date/time of report (UTC)

APPENDIX 3

**"PHASES" RELATED TO VOYAGES
IN PIRACY AND ARMED ROBBERY THREAT AREAS**

Phase Symbol	Phase Description
A	Approaching a piracy/armed robbery threat area (1 hour prior to entering)
B	Entering a piracy/armed robbery threat area
C	Inside a piracy/armed robbery threat area, but no suspect piracy/armed robbery vessel detected
D	Inside a piracy/armed robbery threat area: suspect piracy/armed robbery vessel detected
E	Certainty that piracyarmed robbery will be attempted
F	Pirate/armed robbery vessel in proximity to, or in contact with, own ship
G	Pirates/armed robbers start attempts to enter ship
H	Pirates/armed robbers have succeeded in entering ship
I	Pirates/armed robbers have one or more of the ship's personnel in their control/custody
J	The pirates/armed robbers have gained access to the bridge or the master's office
K	The pirates/armed robbers have stolen property/money etc
L	The pirates/armed robbers start to disembark
M	The pirates/armed robbers have disembarked
N	The pirate/armed robbery vessel is no longer in contact with the ship
O	Own ship leaves the piracy/armed robbery threat area

APPENDIX 4

FORMAT FOR REPORTING TO IMO THROUGH MARITIME ADMINISTRATIONS OR INTERNATIONAL ORGANIZATIONS

- 2* Ship's name and IMO number
 - Type of ship
 - Flag
 - Gross tonnage
- 3 Date and time
- 4 Latitude Longitude
 - Name of the area**
 - While sailing, at anchor or at berth?
- 5 Method of attack
 - Description/number of suspect craft
 - Number and brief description of pirates/robbers
 - What kind of weapons did the pirates/robbers carry ?
 - Any other information (e.g. language spoken)
- 6 Injuries to crew and passengers
 - Damage to ship (Which part of the ship was attacked?)
 - Brief details of stolen property/cargo
- 7 Action taken by the master and crew
- 8 Was incident reported to the coastal authority and to whom?
- 9 Reporting State or international organization
- 10 Action taken by the Coastal State

* Corresponding to the column numbers in the annex to the IMO monthly circulars

** The following definition of piracy is contained in article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS):

“Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).”

APPENDIX 5

DECALOGUE OF SAFETY

1 Watch over the ship and the cargo

It is the duty of every Master to take care of the cargo and take precautionary measures for the complete safety of the ship, as well as that of the activities carried out on board by the crew or other persons employed on board. All crew members should co-operate in the vigilance, in their own interests, communicating any suspicious activity to the Officer of the Watch.

2 Illuminate the ship and its side

Keep the ship illuminated, particularly, the outer side and the whole length of the deck, using high powered floodlights. Bad visibility impedes the action of the watchmen, constituting a favourable factor for unlawful activities. Do not forget what is recommended in rules 2 and 30 of the COLREG.

3 Establish communication for outside support

Whenever possible, install a telephone line with easy access for the watchman or crew member on duty. Ask for assistance by the telephone.

Remember also the list of stations which will be on permanent watch on VHF - channel 16. These stations can forward the request for assistance to the competent authorities.

4 Control of accesses to the cargo and to living quarters

The Master's cabin is one of the main objectives of the assailants who are looking for money and the master keys to other living quarters, to steal the crew's personal effects of value and nautical equipment from the bridge. The cabins and other living quarters should be kept locked whenever their occupants are absent.

Normally cargo will only be the object of robbery or theft if the criminals have advance knowledge of the contents, through information collected by unscrupulous persons who have access to the bill of lading. Attempt to stow the containers with valuable cargo in a manner to obstruct their doors. Isolate the means of access to the ship and also the accesses to the internal areas, creating a sole way of entry and exit by the gangway, guaranteeing its control by the watchman posted there.

5 Keep the portholes closed

Open portholes can be an easy access to clever criminals: close them with the clips in place always when you leave. Try also, to keep the accesses to internal areas locked, guaranteeing the entry and exit by the gangway watchman.

6 Do not leave valuables exposed

Try to reduce the opportunities of robbery by putting all portable equipment which is not in use to its place of storage. Valuables left exposed tempt opportunistic thieves, keep them in safe place under lock and key.

7 Keep the gangways raised

At anchorages and in port, make the access difficult by keeping the gangways and rope ladders raised. In port, only leave the gangway to the dockside down.

8 In case of an assault

- I - do not hesitate to sound the ship's general alarm in case of a threat of assault;
- II - try to keep adequate lighting to permanently dazzle the opponents, in case of an attempt by strangers to climb the ship's side;
- III - raise the alarm, by VHF - channel 16, to the ships in the area and to the permanent watch system of the authorities ashore (cite the existing structure in the port). The efficiency of assistance by the security forces depends on an early alarm;
- IV - sound the alarm with intermittent blasts on the siren and use visual alarms with floodlights and signalling rockets;
- V - if appropriate, to protect the lives of those onboard, use measures to repel the boarding by employing powerful floodlights for dazzling the aggressors or using jets of water or signalling rockets against the areas of boarding; and
- VI - do not attempt any heroic acts.

9 Keep the contracted watchmen under the control of the officer of the watch

Demand a good watchman service. Make them identify all persons that enter and leave the ship. Recommend that the crew co-operate with the control. Do not allow the watchman to leave the gangway, unless he is relieved by another watchman or a crew member.

10 Communicate to the police any occurrence relating to robbery, theft or assault

Occurrences involving assault or robbery should be communicated to the Security forces, for the pertinent legal steps to be taken.

This information will make possible the study of measures to be adopted for the prevention and combat of these crimes, contributing to guaranteeing the safety of the crew and the ship.

Counter-Piracy Operations Disposition and Logistics Guidance

Counter-Piracy Operations Disposition and Logistics Guidance

1. Purpose. To set forth recommended disposition and logistics guidance for counter-piracy (CP) operations.
2. Scope. This guidance provides recommendations for disposition and logistics issues and does not impact operational matters or provide obligatory requirements.
3. Outline. The enclosed checklists facilitate making and executing piracy-related operations disposition and logistics decisions. The checklists draw from the considerations outlined in the discussion section of this paper (after the checklists).

Checklist #1: Includes initial information and guidance (general overview, subjects, victims witnesses, DoD personnel as witnesses, and administrative notes), and a case package checklist for the DoD asset to complete (which provides a structure for the counter-piracy asset to concisely document the key events, including persons and vessels encountered during the contact/interdiction).

Checklist #2: National Maritime Operational Threat Response (MOTR) coordination; provides a starting point for the interagency to consider the facts of a counter-piracy operation, evaluate disposition options, and agree upon and execute courses of action.

Checklists #3 through #6: Provide a framework for evaluating disposition options with respect to suspects, suspect vessels, victims, witnesses, and other vessels (potential “victim” vessels).

Checklist #1

After the initial incident scene is secured, the Naval Criminal Investigative Service, Federal Bureau of Investigation, Coast Guard Investigative Service or other competent law enforcement personnel should be contacted immediately to initiate the investigative and intelligence gathering procedures required for a successful prosecution.¹

The DoD asset involved in the contact/interdiction should complete the “incident report and documentation” in order to provide the following information:

GENERAL OVERVIEW OF SITUATION

- Summary of events to include the following:
 - ✓ What was the location of the interdiction/incident.
 - Lat/long and closest point of approach to nearby coastal countries.
 - ✓ How did USN become aware of Person(s) Under Control (PUC).
 - ✓ What actions were taken to contact PUCs.
 - ✓ What actions did the PUCs take when observed by USN (e.g. show weapons, dump items out of boat, wave).
 - ✓ What was the intent of the contact (e.g., ID query, right of visit boarding).
 - ✓ Any reported piracy events in the area within the past 48 hours.
 - ✓ Did the government vessel(s) have video capability/video equipment on board? Was it employed?
 - NOTE: Undeclared video/photos released without lead investigative agency approval can obstruct and compromise an investigation. Only official use photos/video will be taken of PUCs.

SUBJECTS:

- ✓ Identity to include name, family (father’s/mother’s) name, age, race, nationality and language spoken, and place of birth (parish, village, settlement, landmark, etc.).
- ✓ Copy of any identity documents.
- ✓ Photograph of subject(s) when contacted (e.g. in skiff).
- ✓ Photograph of subject(s) in their own clothing.
- ✓ All subject clothing and personal items should be maintained and ensure each subject’s clothing and personal items are inventoried and maintained separately.

¹ If exigent circumstances exist (such as the sinking of the pirate vessel), logical investigative/intelligence steps should be initiated immediately by the command’s Master-at-Arms personnel.

Counter-Piracy Operations Disposition and Logistics Guidance

- ✓ Diagram/documentation identifying the location of subject(s) during incident (who was in each skiff).
- ✓ General medical condition of subject(s). Photograph of subject wounds with scale.
- ✓ Maintain silence amongst subjects.
- ✓ Absent exigent circumstances, the FBI, NCIS, USCG or other law enforcement agency will either conduct or authorize interrogations.

VICTIM WITNESSES:

- ✓ Identity to include name, family name (mother's and father's), age, place of birth (parish/village/settlement/landmark/etc.), race, nationality and language spoken.
- ✓ Copy of any identity documents.
- ✓ Photograph of victim(s) when contacted
- ✓ Individual photograph of each victim.
- ✓ Photograph of any victim wounds with scale.
- ✓ Determine next port of call for victim.

DOD PERSONNEL AS WITNESSES:

- ✓ Provide list of personnel directly involved in incident (per their assignment).
- ✓ Provide list of personnel who observed incident (but not directly involved).

EQUIPMENT OR ITEMS POSSESSED BY SUBJECTS:

- ✓ ENSURE PROPER CHAIN OF CUSTODY MAINTAINED.
- ✓ Provide list of communication equipment.
- ✓ Provide list of boarding equipment (ladders, hooks).
- ✓ Provide list of fishing equipment or fish.
- ✓ Provide list of weapons.
- ✓ Photograph of weapons on subject vessel, if possible.

ADMINISTRATIVE NOTES:

- ✓ Use one naming convention for subject(s) throughout process (e.g. PUC #1).
- ✓ Use one naming convention for subject and victim boats in all reports.

U.S. Navy Counter-Piracy Operations Incident Report and Documentation

Reporting Ship: USS _____

Date: _____

1 Incident Summary:

Provide brief narrative of events, to include: (a) Medical status of all persons involved (USN, subjects, victims); (b) how USN became aware of subjects/vessels; (c) actions taken to contact subjects/vessels; (d) intent of contact (render assistance, consensual boarding, etc.); (e) response of subjects; and (f) other pertinent details.

2 Information Developed Prior To Positive Interdiction Action:

A. Distress call received?

- (1.) If yes, when received:
- (2.) From who? Person:
- (3.) Summary of distress call:

Yes

Date: _____

No

Time: _____

Vessel/Agency: _____

B. Radio Contact?

- (1.) With VICTIM vessel?
- (2.) With SUBJECT vessel?

Did not attempt

Did not attempt

Attempt

Unsuccessful

Attempt

Unsuccessful

Attempt

Successful

Attempt

Successful

C. Warning Shots fired by USN?

- (1.) Subject's response?

Yes (# _____)

Cut engines

No

Fled

Other (explain)

D. Fly-Over Conducted?

- (1.) If yes, what was observed?

Yes

No

Counter-Piracy Operations Disposition and Logistics Guidance

E. Other preliminary measures taken (explain):

3 **Boarding**

- | | | |
|--|----------------|-------------------|
| A. Boarding/RHIB/Small Boat Team Deployed? | Yes | No |
| B. Boarding Attempted? | Yes | No |
| If yes, indicate date/time: | Date: _____ | Time: _____ |
| C. Basis of Boarding | | |
| Consensual Boarding | Right of Visit | Render assistance |
| Other (explain): | | |

4 **Vessel Information**

VESSEL #1

Vessel is: ☐ Victim ☐ Suspect

Note: Whenever possible, PHOTOGRAPH vessel prior to executing interdiction action.

Initial Vessel Acquisition

Time of radar acquisition:	Location*:
Course:	Speed:
Time of visual acquisition:	Location*:
Course:	Speed:

* Provide distance and direction from reference point on land:

Vessel Information

Length:	Type*:	Hull Material:
Name on hull:		Hull Color:
#s on hull:		Propulsion:
Hailing Port:		Flag flown:
Vessel activity:		Riding High/Low?
		# Crew observed:

* E.G.; Merchant Ship (M/V), Merchant Tanker (M/T), Cruise Ship (C/S) Dhow, Skiff

Vessel Registration and Documentation

Vessel name on registration documents:

Flag State indicated on registration documents:

Registration number:

Flag state claimed by Captain/Master:

Operator's License:	#:	Date:
Foreign Fishing Permit	#:	Date:

Counter-Piracy Operations Disposition and Logistics Guidance

Ship's Log: ☐ Yes ☐ No

Purpose of Voyage

☐ Cargo ☐ Fishing ☐ Passenger ☐ Recreation

☐ Other

Usual Route:

Type amount and location of cargo/fish:

When where cargo loaded/ fish caught:

Vessel Seizure

Vessel Seized?: ☐ Yes Date: Time: ☐ No

Seaworthy? ☐ Yes ☐ No

Where maintained?

5 Vessel Operator Information

VESSEL #1 Contd.

Captain/Master/Owner Information

Owner aboard: ☐ Yes ☐ No Family Name

Owner Name: Nationality:

Owner Address: Language:

DOB: POB:

Master/Captain aboard: ☐ Yes ☐ No Family Name

Name: Nationality:

Address: Language:

DOB: POB:

If Master is Not Aboard:

Master's name according to Vessel Documents:

Location when departed: Date Master Departed:

How Departed: Reason Departed:

Owner aware? ☐ Yes ☐ No

Counter-Piracy Operations Disposition and Logistics Guidance

Name, family name, address, language, DOB and POB of person in charge in Master's absence:

6 Vessel Information

VESSEL #2

Vessel is: ☐ Victim ☐ Suspect

Note: Whenever possible, PHOTOGRAPH vessel prior to executing interdiction action.

Initial Vessel Acquisition

Time of radar acquisition: Location*:
Course: Speed:
Time of visual acquisition: Location*:
Course: Speed:
* Provide distance and direction from reference point on land:

Vessel Information

Length: Type*: Hull Material:
Name on hull: Hull Color:
#s on hull: Propulsion:
Hailing Port: Flag flown:
Vessel activity: Riding High/Low?
Crew observed:
* E.G.; Merchant Ship (M/V), Merchant Tanker (M/T), Cruise Ship (C/S) Dhow, Skiff

Vessel Registration and Documentation

Vessel name on registration documents:
Flag State indicated on registration documents:
Registration number:
Flag state claimed by Captain/Master:
Operator's License: #: Date:
Foreign Fishing Permit #: Date:
Ship's Log: ☐ Yes ☐ No

Purpose of Voyage

☐ Cargo ☐ Fishing ☐ Passenger ☐ Recreation
☐ Other
Usual Route:

Counter-Piracy Operations Disposition and Logistics Guidance

Type amount and location of cargo/fish:

When where cargo loaded/ fish caught:

Vessel Seizure

Vessel Seized?: ☐ Yes Date: Time: ☐ No
 Sea worthy? ☐ Yes ☐ No
 Where maintained?

7 Vessel Operator Information

VESSEL #2 Contd.

Captain/Master/Owner Information

Owner aboard: ☐ Yes ☐ No Family Name
 Owner Name: Nationality:
 Owner Address: Language:
 DOB: POB:

Master/Captain aboard: ☐ Yes ☐ No Family Name
 Name: Nationality:
 Address: Language:
 DOB: POB:

If Master is Not Aboard:

Master's name according to Vessel Documents:
 Location when departed: Date Master Departed:
 How Departed Reason Departed:
 Owner aware? ☐ Yes ☐ No
 Name, family name, address, language, DOB and POB of person in charge in Master's absence:

Counter-Piracy Operations Disposition and Logistics Guidance

****Attach pages for additional vessels as necessary.****

8

Person Under Control (PUC) Information

General instructions:

- **Photograph PUC on own vessel and in own clothes whenever possible.**
- **If photographs cannot be taken to document PUC's position in vessel, attach sketch of same.**
- **Photograph PUC with name card; include facial and full body shots.**
- **Enforce silence amongst PUCs, separate if possible**

PUC #1

Name:	DOB/Age:	POB:	Nationality:	Family Name:
Language(s) spoken:				
When taken under control?:	Date:		Time:	
Photographed at sea?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Photographed after controlled?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Clothing retained?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Observed with weapons?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Observed using weapons?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Sustained Injuries?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
-If yes, explain:	<input type="checkbox"/> Yes		<input type="checkbox"/> No	

PUC #2

Name:	DOB/Age:	POB:	Nationality:	Family Name:
Language(s) spoken:				
When taken under control?:	Date:		Time:	
Photographed at sea?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Photographed after controlled?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Clothing retained?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Observed with weapons?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Observed using weapons?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Sustained Injuries?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
-If yes, explain:				

PUC #3

Name:	DOB/Age:	POB:	Nationality:	Family Name:
Language(s) spoken:				

Counter-Piracy Operations Disposition and Logistics Guidance

When taken under control?:	Date:	Time:
Photographed at sea?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Photographed after controlled?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Clothing retained?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Observed with weapons?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Observed using weapons?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Sustained Injuries?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
-If yes, explain:		

PUC #4

Name:	DOB/Age:	POB:	Nationality:	Family Name:
Language(s) spoken:				
When taken under control?:	Date:		Time:	
Photographed at sea?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Photographed after controlled?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Clothing retained?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Observed with weapons?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Observed using weapons?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Sustained Injuries?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
-If yes, explain:				

PUC #5

Name:	DOB/Age:	POB:	Nationality:	Family Name:
Language(s) spoken:				
When taken under control?:	Date:		Time:	
Photographed at sea?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Photographed after controlled?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Clothing retained?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Observed with weapons?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Observed using weapons?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Sustained Injuries?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
-If yes, explain:				

9

Use of Weapons

By Subjects:

Did subjects possess firearms?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
-Types of weapons observed?		
Subjects fired weapons?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
-Types of weapons fired?		

Counter-Piracy Operations Disposition and Logistics Guidance

Number of subjects who fired?

Approximate number of rounds?

☐ 1 - 10

☐ More than 10

By USN:

Shots fired by ship?

☐ Yes

☐ No

-Approximate # rounds fired?

☐ 1 - 10

☐ More than 10

-Types of weapons used?

Shots fired by RHIB/small boat?

☐ Yes

☐ No

-Approximate # rounds fired?

☐ 1 - 10

☐ More than 10

-Types of weapons used?

By Victims:

Did victims possess firearms?

☐ Yes

☐ No

-Types of weapons observed?

Victims fired weapons?

☐ Yes

☐ No

-Types of weapons fired?

Number of victims who fired?

Approximate number of rounds?

☐ 1 - 10

☐ More than 10

Explain circumstances if weapons were fired?

Weapons

Item #:

Type:

Fired
(y/n):

Recovered from:

Recovered by:

1
2
3
4
5
6
7
8
9
10

Vessels

- Assign naming convention (e.g., Skiff A, B, C, etc.) and describe each below:

Counter-Piracy Operations Disposition and Logistics Guidance

Vessel:	Description	Storage location	Photographed
---------	-------------	------------------	--------------

Communication Equipment

Item#:	Description	Location Found	Storage Location	Photographed
1				
2				
3				
4				
5				

Pirate/Boarding Equipment

- **Include approximate dimensions and weight of items.**

Item#:	Description	Location Found	Storage Location	Photographed
1				
2				
3				
4				
5				

Clothing Items

Item#:	Description	Location Found	Storage Location	Photographed
1				
2				
3				
4				
5				

10

DOD/USN Participants and Other Witnesses

RHIB Team Participants

Name:	Rank/Position/Title:	RHIB Team/Assignment:
-------	----------------------	--------------------------

Counter-Piracy Operations Disposition and Logistics Guidance

Other DOD/USN Witnesses

Name:

Rank/Position/Title:

Assignment:

Victims (use a separate checklist for each victim)

Name:	Family Name:	Injured (y/n):	Vessel:	DOB:	Contact #s:	POB:	Language:
-------	-----------------	-------------------	---------	------	----------------	------	-----------

Photograph
of Victim?
(overall and
face with
name card)
Photographs
of any
injuries ?
(w/scale)
Clothing
retained?

Counter-Piracy Operations Disposition and Logistics Guidance

Checklist #2: MOTR Coordination

- ☐ Following a piracy-related interdiction/incident, convene a MOTR conference call, in accordance with the MOTR Protocols, at the earliest possible opportunity once one of the five MOTR triggers is met.
- ☐ **DOD** briefs the facts of the case.
- ☐ **DOD proposes a course of action (COA). Note:** In the first MOTR conference call, it is unlikely that there will be sufficient facts to agree on a final COA. Put another way, the first MOTR conference call will most likely be an informational call.
- ☐ **CBP** added to MOTR conference call if COA decision is U.S. prosecution.
- ☐ **MOTR conference call participants agree on a conference call schedule and execute agreed-upon COAs.**

Counter-Piracy Operations Disposition and Logistics Guidance

Checklist #3: U.S. Prosecution — Suspect Disposition

- ☐ **DOD** refers case to **DOJ (Criminal Division (CTS))** for prosecution. **DOD** provides **DOJ** with all investigative materials. If **DOJ** agrees to prosecute, continue with this checklist.
- ☐ **DOS** approaches littoral State(s) and requests International Maritime Interdiction Support (IMIS).
- ☐ **DOJ** charges suspects.
- ☐ **DOJ** or **DOD** provides an aircraft, security personnel, and transport plan.
- ☐ **CBP** provided advance notice of arrival information on suspects - (name, DOB, citizenship, DOS visa issued (if any), responsible (custody) U.S. agency, U.S. port of arrival, date/time of arrival, transport details)
- ☐ **DOD** transports suspects to IMIS port. **DOD** security personnel or **DOJ** (FBI) takes custody of suspects, with host nation support, transports to U.S. and transfers custody to **DOJ** (U.S. Marshal Service).

Counter-Piracy Operations Disposition and Logistics Guidance

Checklist #4: Foreign Prosecution — Suspect Disposition

- ☐ **DOS** approaches littoral State, flag State of victim vessel, or other State and requests it undertake prosecution.
- ☐ **DOS** approaches littoral State(s) and requests International Maritime Interdiction Support (IMIS).
- ☐ **Prosecuting State** charges suspects.
- ☐ **DOD** provides an aircraft, security personnel, and transport plan.
- ☐ **DOD** transports suspects to IMIS port. **DOD** security personnel or **Prosecuting State** security personnel take custody of suspects, with host nation support, and transports to **Prosecuting State**.

Counter-Piracy Operations Disposition and Logistics Guidance

Checklist #5: “Victim Vessel” Disposition

This checklist is completed in any case where there is a vessel on-scene that is the apparent victim of piratical acts or other violence against maritime navigation, irrespective of whether a U.S. or foreign prosecution is contemplated.

- | |
|---|
| <input type="checkbox"/> Interdicting Unit obtains evidence and imagery in accordance with Case Package Checklist. |
| <input type="checkbox"/> DOS approaches flag State of victim vessel and obtains confirmation or denial of victim vessel nationality. |
| <input type="checkbox"/> DOD proposes disposition plan for victim vessel. |
| <input type="checkbox"/> Transport to nearest appropriate State; handoff to U.S. country team, flag State personnel, port State personnel, or owner. |
| <input type="checkbox"/> Destroy as a hazard to navigation (most likely if nationality of vessel is denied, there is no apparent flag State, or the vessel is not seaworthy to nearest port). |
| <input type="checkbox"/> DOS approaches flag State of victim vessel and obtains approval of disposition plan. |
| <input type="checkbox"/> DOD executes disposition plan for victim vessel. |

Counter-Piracy Operations Disposition and Logistics Guidance

Checklist #6: Non-Suspect (“NS”) Disposition

This checklist is completed in any case where there are Witnesses/Victims/Persons not eligible for prosecution, but being held as PUCs, irrespective of whether a U.S. or foreign prosecution is contemplated.

- ☐ **Investigators** complete NS interviews at-sea.
- ☐ **Intelligence Community (IC)** reports results of database checks. If no basis to continue holding the NSs, proceed with this checklist.
- ☐ Possible Course of Action: **Release vessel with NSs embarked.**
- ☐ Possible Course of Action: **Transport NSs to the United States (if U.S. prosecution).**
 - ☐ **DOS** approaches flag State of victim vessel.
 - ☐ **DOS** requests the flag State consent or waive objection to NSs being brought to the United States as witnesses.
 - ☐ If flag State consents or waives objection, **DOS** advises State of origin (State of nationality or State in which NS is entitled to permanent residence) of NSs of the matter and that they will be brought to the U.S. to support prosecution.
 - ☐ **DOJ** issues material witness warrants.
 - ☐ **CBP** provided advance notice of arrival information on NSs - (name, DOB, citizenship, DOS visa issued (if any), responsible (custody) U.S. agency, U.S. port of arrival, date/time of arrival, transport details)
 - ☐ NSs are delivered by **DOD** to **DOJ (U.S. Marshal Service)** in the U.S., via third country, possibly in accordance with the International Maritime Interdiction Support (IMIS) arrangement for the suspects.
- ☐ Possible Course of Action: **Transport NSs to State of origin.**
 - ☐ **DOS** approaches flag State of victim vessel.
 - ☐ **DOS** requests that the flag State consent or waive objection to NSs being transported to their home country.
 - ☐ If flag State consents or waives objection, **DOS** advises State of nationality of NSs of the matter and seeks assistance in transport.
 - ☐ If prosecution of suspects is desired (in U.S. or third country), **DOS** seeks State of origin assurances that NSs will be reasonably available to investigators, prosecutors, and defense counsel in the future.

Counter-Piracy Operations Disposition and Logistics Guidance

- ☐ Possible Course of Action: **Transport NSs to prosecuting third State.**
 - ☐ **DOS** approaches flag State of victim vessel.
 - ☐ **DOS** request that the flag State consent or waive objection to witnesses being transported to third country as witnesses.
 - ☐ If flag State consents or waives objection, **DOS** advises State of origin of witness/victim of the matter.
 - ☐ **DOD** transports witnesses/victims to third State, possibly in accordance with the International Maritime Interdiction Support (IMIS) arrangements.

Discussion.

1. Context. Piracy is an international crime consisting of illegal acts of violence, detention, or depredation committed for private ends by the crew or passengers of a private ship or aircraft in or over international waters against another ship or aircraft or person and property on board. Piracy also includes any act of voluntary participation in the operation of a ship or aircraft with knowledge of facts making it a pirate ship. A successful counter-piracy (CP) mission will most likely result in Persons Under Control (PUCs) of U.S. or coalition forces. In addition to the victims of, or active participants in, piratical acts, PUCs may include witnesses needed for successful prosecution of pirates or persons with no role in the piratical acts and no value as witnesses. Some PUCs may require more extensive medical care than is available on scene.

2. Assumptions. Following a counter-piracy engagement, all persons on board the suspected pirate vessel(s) or vessels under the control of suspected pirates are generally placed under the control of U.S. forces for investigative purposes. First aid and essential medical care will be provided as necessary, and investigative resources, as appropriate, may be brought to the scene. Remains, if any, will be preserved to the extent practicable for evidentiary value and eventual repatriation. Law enforcement agents from the Naval Criminal Investigative Service (NCIS), Coast Guard Investigative Service (CGIS) and, at the discretion of the Department of Justice, the Federal Bureau of Investigation (FBI), will gather evidence and interview all PUCs, as appropriate, to determine their status (e.g., victim, pirate, etc.).

3. Disposition of Non-Criminals and Other Witnesses.

a. *Victims of Piracy.* Ultimate responsibility for the general welfare of piracy victims remains with the flag State of the victim vessel and/or the victims' State of origin. As such, victims of piracy will not be indefinitely detained onboard U.S. warships. Authority over a vessel, other than a pirate vessel, on the high seas remains with the flag State. Required actions may include coordination with federal agencies including the Department of Defense, Joint Staff, Department of State (DOS), Department of Justice (DOJ), Department of Homeland Security/U.S. Coast Guard. This coordination will normally be via the Maritime Operational Threat Response (MOTR) process or another means of interagency coordination. Initial facts that may be required:

1. Confirm State of registry of pirated vessel if not already known (DOS);
2. Ascertain intentions of flag State WRT disposition of vessel (DOS);
3. Ascertain intentions of victim's state of nationality (On-scene commander/law enforcement/DOS):

- a. Remaining at sea with their vessel(s), assuming seaworthiness;
 - b. Transport to designated port/location;
 - c. Confirm ability to hand off to flag/home state authorities (DOS); and
4. Coordinate with law enforcement/prosecuting authorities (if known) and flag/home State to determine availability/willingness to participate in trial (DOJ/DOS).

b. *Additional issues with victims of piracy.* After collecting evidence and other necessary information from piracy victims, it is important to ascertain their willingness and ability to provide testimony at a criminal trial. This may be difficult, because it is unlikely that the location of any potential prosecution will have been determined at this stage. As a general rule, individuals in this category should not be detained against their will after their status has been determined with reasonable certainty. Actions that may be required:

1. Coordination with law enforcement/prosecuting authorities (if known) and State of origin to determine appropriate COAs for ensuring availability/willingness to participate in trial (DOJ/DOS).
2. For victims of crimes other than piracy, ascertain disposition desires of individuals' State of origin and nation with jurisdiction over the crime (DOJ/DOS). Options may include:
 - a. Remaining at sea in their vessel(s), assuming seaworthiness;
 - b. Transportation to designated port/location for further transport to State of origin or prosecuting State;
 - c. Confirm ability to hand off to home/prosecuting State authorities (DOS); and
 - d. Coordinate with law enforcement/prosecuting authorities (if known) and State of origin to determine process for participation in trial (DOJ/DOS).

Counter-Piracy Operations Disposition and Logistics Guidance

4. Disposition of Prosecutable PUCs. Every effort should be made to ensure that PUCs are detained onboard naval vessels only for brief periods. For operational reasons, transfer to larger vessels equipped and manned for detention of personnel is not, and cannot be, a long-term solution to the detention problem. These vessels (amphibious assault ships and aircraft carriers) are a vital component of operations throughout the AOR.

5. Offenses. Consistent with the checklists above, standard procedures are designed to maximize admissibility of evidence, including witness statements, under U.S. law. 18 U.S.C. § 1651 provides: “Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.” U.S. law also provides extraterritorial jurisdiction over other criminal acts that may be relevant, including assault on a federal official, 18 U.S.C. § 111. After sufficient evidence has been gathered, law enforcement and legal authorities must promptly review it to determine what offenses may be charged in U.S. courts or foreign courts and what level of culpability exists for each PUC.

6. Universal crime. The U.S. does not have exclusive jurisdiction over criminal acts in a piracy case. As a universal crime, other States may have domestic laws that allow prosecution for acts of piracy on the high seas regardless of the flag State of the vessel victimized or the nationality of its crew.

7. Media interest. It can be anticipated that there may be considerable media interest in piracy interdictions. All press releases should be coordinated with Department/Agency headquarters.

BUILDING PARTNERSHIP CAPACITY



General Assembly

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Agenda item 75

Oceans and the law of the sea

Identical letters dated 28 October 2005 from the Permanent Representatives of Indonesia, Malaysia and Singapore to the United Nations addressed to the Secretary-General and the President of the General Assembly

We have the honour to inform you that the Government of the Republic of Indonesia, the Government of Malaysia and the Government of the Republic of Singapore met in Batam, on 1 and 2 August 2005, to discuss matters pertaining to the safety of navigation, environmental protection and maritime security in the Straits of Malacca and Singapore. The meeting unanimously adopted the Batam joint ministerial statement on the Straits of Malacca and Singapore (see annex I), in which the three countries acknowledged the role that the State users of the Straits and relevant international agencies could play in respect of the Straits. The ministerial statement also reaffirmed the primary responsibility of the littoral States for the safety of navigation, environmental protection and maritime security in the area.

Towards designing a framework of cooperation for enhancing safe navigation, environmental protection and security in the Straits of Malacca and Singapore, the three Governments, with the close collaboration of the International Maritime Organization, also convened a “Meeting on the Straits of Malacca and Singapore: Enhancing Safety, Security and Environmental Protection” in Jakarta on 7 and 8 September 2005. The meeting produced the Jakarta Statement (see annex II), which emphasizes the need to balance the interest of the littoral States and the user States while respecting the sovereignty of the littoral States, and to establish a mechanism to facilitate cooperation between them to discuss issues relating to the safety, security and environmental protection of the Straits, including exploring possible options for burden sharing.

We would be grateful if you would have the present letter and its annexes circulated as a document of the General Assembly under agenda item 75 and treat it as a source of inputs into the discussion of the agenda item.

(Signed) Rezlan Ishar **Jenie**
Ambassador
Permanent Representative
Republic of Indonesia

(Signed) Hamidon **Ali**
Ambassador
Permanent Representative
Malaysia

(Signed) Vanu Gopala **Menon**
Ambassador
Permanent Representative
Republic of Singapore

Annex I to the identical letters dated 28 October 2005 from the Permanent Representatives of Indonesia, Malaysia and Singapore to the United Nations addressed to the Secretary-General and the President of the General Assembly

The Batam Joint Ministerial Statement on the Straits of Malacca and Singapore

**BATAM, INDONESIA
1-2 AUGUST 2005**

1. The Ministers of Foreign Affairs of Indonesia, Malaysia and Singapore met in Batam, on 1-2 August 2005 to discuss matters pertaining to the safety of navigation, environmental protection and maritime security in the Straits of Malacca and Singapore. The Foreign Ministers of Malaysia and Singapore appreciated the initiative of the Foreign Minister of Indonesia for convening this timely Meeting in view of the current challenges faced by the littoral States and user States of the Straits.
2. The Ministers noted that the last Tripartite Ministerial Meeting of the Straits of Malacca and Singapore was held 28 years ago on 24 February 1977 in Manila, the Philippines.
3. The Ministers reaffirmed the sovereignty and sovereign rights of the Littoral States over the Straits of Malacca and Singapore. As such, the primary responsibility over the safety of navigation, environmental protection and maritime security in the Straits of Malacca and Singapore lies with the littoral States.
4. The Ministers emphasized that whatever measures undertaken in the Straits should be in accordance with international law including UNCLOS 1982. In this regard they acknowledge the role that user States and relevant international agencies could play in respect of the Straits.
5. The Ministers recognized the importance of the Tripartite Ministerial Meeting on the Straits of Malacca and Singapore in providing the overall framework for cooperation. They agreed that the Ministers and the Senior Officials should meet on a more regular basis to address relevant issues in a timely manner.
6. The Ministers acknowledged the good work carried out by the Tripartite Technical Experts Group (TTEG) on Safety of Navigation in the Straits of Malacca and Singapore. They also recognized the efforts of the

Revolving Fund Committee (RFC) in dealing with issues of environmental protection in the Straits.

7. The Ministers supported the convening of the Meeting in Kuala Lumpur on 1-2 August 2005 of the Service Chiefs of Indonesia, Malaysia, Singapore and Thailand and encouraged them to further strengthen their cooperation.
8. The Ministers agreed to establish a TTEG on Maritime Security to complement the works of the existing TTEG on Safety of Navigation and the Revolving Fund Committee.
9. The Ministers called upon user States, relevant international agencies, and the shipping community to assist the littoral States in the areas of capacity building, training and technology transfer, and other forms of assistance in accordance with UNCLOS 1982. In this regard they welcomed closer collaboration between littoral States and the international community.
10. The Ministers expressed regret at the Lloyds Joint War Committee's categorization of the Straits of Malacca and Singapore as a "war risk zone" without consulting and taking into account the existing efforts of the littoral States to deal with the problems of safety of navigation and maritime security. The Ministers urged the Committee to review its assessment accordingly.
11. The Ministers welcomed the forthcoming "Meeting on the Straits of Malacca and Singapore: Enhancing Safety, Security and Environmental Protection" in collaboration with the International Maritime Organization to be held on 7-8 September 2005 in Jakarta, Indonesia.

Batam, 2 August 2005.

Annex II to the identical letters dated 28 October 2005 from the Permanent Representatives of Indonesia, Malaysia and Singapore to the United Nations addressed to the Secretary-General and the President of the General Assembly

JAKARTA STATEMENT

ON

**ENHANCEMENT OF SAFETY, SECURITY AND ENVIRONMENTAL PROTECTION
IN THE STRAITS OF MALACCA AND SINGAPORE**

Jakarta, Indonesia, on 8 September 2005

The Government of the Republic of Indonesia and the International Maritime Organization (IMO) convened, pursuant to the decisions of the ninety-third and ninety-fourth sessions of the IMO Council in relation to the Protection of Vital Shipping Lanes, a Meeting on the Straits of Malacca and Singapore: Enhancing Safety, Security and Environmental Protection, which took place in Jakarta on 7 and 8 September 2005 (hereinafter referred to as “the Jakarta Meeting”). The Jakarta Meeting was organized in co-operation with the Government of Malaysia and the Government of the Republic of Singapore.

The purpose of the Jakarta Meeting was to provide a forum for discussions with the aim of agreeing on a framework of co-operation to enhance the safety of navigation, environmental protection and security in the Straits of Malacca and Singapore (hereinafter referred to as “the Straits”).

The Jakarta Meeting was attended by delegations from:

AUSTRALIA
BAHAMAS
CANADA
CHINA
CROATIA
DENMARK
EGYPT
FRANCE
GERMANY
GREECE
INDIA
INDONESIA

IRAN (ISLAMIC REPUBLIC OF)
ITALY
JAPAN
KUWAIT
LAO PEOPLE'S DEMOCRATIC
REPUBLIC
MALAYSIA
NETHERLANDS
NEW ZEALAND
NORWAY
PAKISTAN
PHILIPPINES

REPUBLIC OF KOREA
RUSSIAN FEDERATION
SINGAPORE
SPAIN
THAILAND
TURKEY

UNITED KINGDOM
UNITED REPUBLIC OF
TANZANIA
UNITED STATES
VIET NAM
YEMEN

by observers from the following intergovernmental organizations:

INTERNATIONAL HYDROGRAPHIC ORGANIZATION (IHO)
ASSOCIATION OF SOUTH EAST ASIAN NATIONS (ASEAN)

and by observers from the following non-governmental organizations:

INTERNATIONAL CHAMBER OF SHIPPING (ICS)
INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)
OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF)
INTERNATIONAL FEDERATION OF SHIPMASTERS' ASSOCIATIONS
(IFSMA)
INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS
(INTERTANKO)
INTERNATIONAL GROUP OF P AND I CLUBS (P AND I)
MALACCA STRAIT COUNCIL

The Jakarta Meeting,

RECOGNIZING the strategic importance of the Straits for regional and global seaborne trade and the need to ensure that they remain safe and open to shipping at all times;

RECOGNIZING ALSO that the Straits are located within the territorial sea of Indonesia, Malaysia and Singapore (hereinafter referred to collectively as the "littoral States") and within the continental shelf and the exclusive economic zone of Indonesia and Malaysia and are straits used for international navigation as defined in the United Nations Convention on the Law of the Sea (hereinafter referred to as "UNCLOS");

RECOGNIZING FURTHER the safety, security and environmental vulnerabilities of the Straits and the possibility that unlawful acts committed therein may have a serious negative impact on the flow of traffic there-through;

NOTING with particular concern the number of incidents of unlawful acts and armed robbery against ships and seafarers reported to have taken place in the Straits;

BEING AWARE of the multiplicity of interests in the Straits and the importance of balancing the interests between littoral and user States, while respecting the sovereignty of the littoral States;

ACKNOWLEDGING the rights and obligations of States under the international law of the sea, including the provisions of UNCLOS and, in particular, article 43 thereof calling for co-operation by agreement among user States and States bordering straits used for international navigation on matters relating to navigational and safety aids and the prevention, reduction and control of pollution from ships;

ACKNOWLEDGING ALSO the efforts and achievements of the Tripartite Technical Experts Group on Safety of Navigation (hereinafter after referred to as "TTEG") comprising officials of the three littoral States in enhancing the safety of navigation in, and the environmental protection of, the Straits and, in particular, through routing measures, including Traffic Separation Schemes, deep water routes, precautionary areas and ship reporting systems adopted by IMO, as well as the TTEG's progress in advancing cooperation in the maintenance of the Straits, consonant with article 43 of UNCLOS;

RECALLING that the United Nations General Assembly resolution A/RES/59/24 on Oceans and the Law of the Sea, while addressing the issues relating to maritime safety and security and the marine environment, has, *inter alia*:

1. urged all States, in cooperation with IMO, to combat piracy and armed robbery at sea;
2. noted the concerns of the IMO Council and IMO Secretary-General with regard to keeping shipping lanes of strategic importance and significance safe and open to international maritime traffic and thereby ensuring the uninterrupted flow of traffic, and welcomed the Council's request, in this regard, that the Secretary-General of IMO continue work on the issue in collaboration with parties concerned; and
3. emphasized the importance to protect and preserve the marine environment and its living marine resources against pollution and physical degradation;

RECALLING ALSO the ASEAN Declarations, Statements, Joint Communiqués and Action Plans on Combating Terrorism; including the ASEAN Regional Forum Statements on Cooperation Against Piracy and Other Threats to Maritime Security and on Strengthening Transport Security Against International Terrorism;

UPHOLDING the Batam Joint Statement, adopted on 2 August 2005 by the Fourth Tripartite Ministerial Meeting of the Littoral States on the Straits of Malacca and Singapore, which, *inter alia*:

1. reaffirms that the primary responsibility over the safety of navigation, environmental protection and maritime security in the Straits lies with the littoral States;
2. emphasizes that whatever measures are undertaken in the Straits should be in accordance with international law including UNCLOS and in this regard acknowledges the interests of user States and relevant international agencies and the role they could play in respect of the Straits;
3. recognizes the importance of the Tripartite Ministerial Meeting on the Straits of Malacca and Singapore in providing the overall framework for co-operation;
4. recognizes the importance of engaging the States bordering the funnels leading to the Straits and the major users of the Straits;
5. acknowledges that the littoral States should address the issues of maritime security comprehensively which includes transboundary crimes such as piracy, armed robbery and terrorism;
6. acknowledges also the work of the TTEG on Safety of Navigation and the Revolving Fund Committee which manages a fund for enabling the prompt response to oil spills from ships;
7. provides for the establishment of a Tripartite Technical Expert Group on Maritime Security to complement the work of the TTEG on Safety of Navigation and the Revolving Fund Committee; and
8. recognizes the importance of and welcomes the closer collaboration between the littoral States and the international community and, in particular, the assistance of the user States, relevant international agencies, and the shipping community in areas of capacity building, training and technology transfer, and other forms of assistance in accordance with UNCLOS;

RECOGNIZING the previous efforts of IMO through international conferences and regional workshops in 1993, 1996, 1999 and 2001, and other regional fora such as the ASEAN and the ASEAN Regional Forum, to promote greater co-operation among littoral States and stakeholders in maritime safety and marine environment protection, as well as in regional anti-piracy co-operative arrangements;

COMMENDING the efforts of the defense forces of the littoral States and Thailand in strengthening modalities for co-operation such as the initiative of Indonesia on the Malacca Strait Security Initiative in an effort to enhance maritime security in the Straits;

RECOGNIZING the positive results of co-ordinated maritime patrols among the security forces of the littoral States and other co-operative maritime security arrangements and measures in the Straits;

ACKNOWLEDGING the potential of the Marine Electronic Highway concept, currently under development by IMO in co-operation with the littoral States and other stakeholders, in enhancing navigational safety and environmental protection in the Straits and the littoral States' decision to establish a pilot project of the Marine Electronic Highway, with the Project Management Office in Batam, Indonesia;

NOTING the valuable role and function of the Maritime Enforcement Co-ordination Center in Perak, Malaysia in addressing unlawful acts and armed robbery against ships;

NOTING ALSO the importance of the forthcoming establishment of the ReCAAP Information Sharing Center in Singapore, in addressing piracy and armed robbery against ships and welcoming the signing of ReCAAP by five States;

NOTING WITH APPRECIATION the contribution States and other stakeholders have made and continue to make towards the enhancement of the safety of navigation in, and the protection of the environment of, the Straits;

RESPECTING FULLY the sovereignty, sovereign rights, jurisdiction and territorial integrity of the littoral States, the principle of non-intervention, and the relevant provisions of international law, in particular the UNCLOS;

DESIRING that the Straits remain safe and open to international shipping at all times, as provided for under international law, in particular UNCLOS, and where applicable, domestic law, and to build upon and enhance existing cooperative arrangements and measures towards this end;

DESIRING FURTHER to enhance the safety, security and environmental protection of the Straits;

HAS AGREED:

- (a) that the work of the TTEG on Safety of Navigation in enhancing the safety of navigation and in protecting the marine environment in the Straits, including the efforts of the TTEG in relation to the implementation of article 43 of UNCLOS in the Straits should continue to be supported and encouraged;
- (b) that a mechanism be established by the three littoral States to meet on a regular basis with user States, the shipping industry and others with an interest in the safe navigation through the Straits, to discuss issues relating to

the safety, security and environmental protection of the Straits, as well as to facilitate co-operation in keeping the Straits safe and open to navigation, including exploring the possible options for burden sharing, and to keep the IMO informed, as appropriate, of the outcome of such meetings;

- (c) that efforts should be made through the three littoral States to establish and enhance mechanisms for information exchange within and between States, building, where possible, on existing arrangements such as Tripartite Technical Expert Group mechanisms, so as to enhance maritime domain awareness in the Straits and thus contribute to the enhancement of co-operative measures in the areas of safety, security and environmental protection;
- (d) to promote, build upon and expand co-operative and operational arrangements of the three littoral States, including the Tripartite Technical Expert Group on Maritime Security, co-ordinated maritime patrols in the Straits through, *inter alia*, maritime security training programmes and other forms of co-operation, such as maritime exercises, with a view to further strengthening capacity building in the littoral States to address security threats to shipping;

HAS INVITED the IMO to consider, in consultation with the littoral States, convening a series of follow-on meetings for the littoral States to identify and prioritize their needs, and for user States to identify possible assistance to respond to those needs, which may include information-exchange, capacity-building, training and technical support, with a view to promote and co-ordinate co-operative measures;

EXPRESSES DEEP APPRECIATION to the Government of the Republic of Indonesia for the excellent arrangements made for, the facilities and generous hospitality provided during, the Jakarta Meeting; and to the Governments of the Republic of Indonesia, Malaysia and the Republic of Singapore and the International Maritime Organization for their strenuous efforts to prepare for the Jakarta Meeting and ensure its successful conclusion.



MALAYSIA



INTERNATIONAL MARITIME ORGANIZATION

KUALA LUMPUR MEETING ON THE
STRAITS OF MALACCA AND SINGAPORE:
ENHANCING SAFETY, SECURITY AND
ENVIRONMENTAL PROTECTION
18 - 20 September 2006
Agenda item 4

IMO/KUL 1/4
20 September 2006
ENGLISH ONLY

KUALA LUMPUR STATEMENT
ON
ENHANCEMENT OF SAFETY, SECURITY AND ENVIRONMENTAL PROTECTION
IN THE STRAITS OF MALACCA AND SINGAPORE

Kuala Lumpur, Malaysia on 20 September 2006

The Government of Malaysia and the International Maritime Organization (hereinafter referred to as “IMO”) convened, pursuant to the decisions of the Meeting on enhancement of safety, security and environmental protection in the Straits of Malacca and Singapore held in Jakarta, Indonesia on 7 and 8 September 2005 (hereinafter referred to as “the Jakarta Meeting”) and the twenty-third extraordinary session of the Council of the IMO in relation to the Protection of Vital Shipping Lanes, a Meeting on the Straits of Malacca and Singapore: Enhancing Safety, Security and Environmental Protection, which took place in Kuala Lumpur from 18 to 20 September 2006 (hereinafter referred to as “the Kuala Lumpur Meeting”). The Kuala Lumpur Meeting was organized in co-operation with the Government of the Republic of Indonesia and the Government of the Republic of Singapore.

The purpose of the Kuala Lumpur Meeting was to provide an opportunity for further discussions on the recent developments relating to safety, security and environmental protection of the Straits of Malacca and Singapore (hereinafter referred to as “the Straits”) with the aim of developing mechanisms and programmes to facilitate co-operation in keeping the Straits safe and open to navigation, including the possible options for burden sharing.

The Kuala Lumpur Meeting was attended by the three littoral States: Indonesia, Malaysia and Singapore and by delegations from:

AUSTRALIA	NETHERLANDS
BAHAMAS	NEW ZEALAND
BELGIUM	NIGERIA
BRUNEI DARUSSALAM	NORWAY
CHINA	PAKISTAN
CYPRUS	PHILIPPINES
DENMARK	REPUBLIC OF KOREA
EGYPT	RUSSIAN FEDERATION
FINLAND	SPAIN
FRANCE	SWEDEN
GERMANY	THAILAND
GREECE	UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
INDIA	UNITED STATES
JAPAN	
LIBERIA	

by observers from the following intergovernmental organizations:

ASSOCIATION OF SOUTH EAST ASIAN NATIONS (ASEAN)

and by observers from the following non-governmental organizations:

INTERNATIONAL CHAMBER OF SHIPPING (ICS)
INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)
INTERNATIONAL ASSOCIATION OF MARINE AIDS TO NAVIGATION AND
LIGHTHOUSE AUTHORITIES (IALA)
BIMCO
OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF)
INTERNATIONAL FEDERATION OF SHIPMASTER'S ASSOCIATIONS (IFSMA)
INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS
(INTERTANKO)
INTERNATIONAL PARCEL TANKERS ASSOCIATION (IPTA)
MALACCA STRAIT COUNCIL

The Kuala Lumpur Meeting,

UPHOLDING the Batam Joint Statement, adopted on 2 August 2005 by the Fourth Tripartite Ministerial Meeting of the Littoral States on the Straits of Malacca and Singapore,

RECALLING the achievements of the Jakarta Meeting and upholding also the Jakarta Statement, adopted on 8 September 2005 by the Jakarta Meeting,

RECALLING ALSO that the Straits are located within the territorial sea of Indonesia, Malaysia and Singapore (hereinafter referred to collectively as the "littoral States") and within the continental shelf and the exclusive economic zone of Malaysia and Indonesia and are straits used for international navigation as defined in the United Nations Convention on the Law of the Sea (hereinafter referred to as "UNCLOS"),

RECOGNIZING the continued strategic importance of the Straits for regional and global seaborne trade and the need to ensure that they remain safe and open to shipping at all times,

RECOGNIZING ALSO the importance of enhancing safety and security and protection of the marine environment of the Straits and the possibility that unlawful acts committed therein may have negative impact on the flow of traffic there-through,

RECOGNIZING FURTHER the equally important role of the Straits in contributing towards the development and enrichment of the economies and people of other States,

AFFIRMING the sovereignty, sovereign rights, jurisdiction and territorial integrity of the littoral States over the Straits, as provided for under international law, in particular UNCLOS, and that the primary responsibility over the safety of navigation, environmental protection and maritime security in the Straits lies with the littoral States,

COMMENDING the sustained efforts and achievements of the Tripartite Technical Experts Group on Safety of Navigation (hereinafter referred to as “TTEG on Safety of Navigation”) in enhancing safety of navigation and protection of the marine environment in the Straits,

ACKNOWLEDGING the role of the IMO, the user States, the shipping industry and of other stakeholders in co-operating with the littoral States in promoting and enhancing safety of navigation and environmental protection, and in ensuring the uninterrupted flow of traffic in the Straits,

ACKNOWLEDGING ALSO that the TTEG on Safety of Navigation is an effective mechanism for advancing future co-operation efforts among interested parties consonant with article 43 of UNCLOS,

WELCOMING the progress made in relation to the implementation of the Marine Electronic Highway Demonstration Project for the Straits of Malacca and Singapore developed by IMO in co-operation with the littoral States and funded by the Global Environmental Facility of the World Bank and the Republic of Korea,

COMMENDING the significant and effective efforts of the littoral States since the Jakarta Meeting in enhancing safety of navigation, environmental protection and security in the Straits, in particular to reduce the number of shipping incidents, oil spill incidents from ships, and armed robbery and other unlawful acts against ships to a very low level,

COMMENDING ALSO the significant progress, following the Jakarta Meeting, towards the establishment of the co-operative mechanism between littoral States and user States, the shipping industry and others to facilitate regular discussion, exchange of information and co-operation including the possible option for burden sharing for the enhancement of safety of navigation and environmental protection in the Straits,

COMMENDING FURTHER the joint efforts of the armed forces of the littoral States in contributing to the security of the Straits, through the Malacca Straits Coordinated Patrols and the “Eyes in the Sky” maritime patrols,

NOTING WITH APPRECIATION the entry into force of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (hereinafter referred to as “ReCAAP”) on 4 September 2006, which will lead to the launch of the ReCAAP Information Sharing Centre (hereinafter referred to as “the Centre”) in Singapore in November 2006, as well as the indication of preparedness of Indonesia and Malaysia to cooperate with the Centre,

NOTING ALSO the continuing efforts to establish the Tripartite Technical Experts Group on Maritime Security,

NOTING WITH APPRECIATION the contribution States and other stakeholders have made and continue to make towards the enhancement of the safety of navigation in, and the protection of the environment of, the Straits,

NOTING ALSO that the littoral States have identified a number of projects aimed at enhancing the safety of navigation and environmental protection in the Straits for which they are seeking cooperation from user States and other stakeholders for their implementation,

DESIRING that the Straits remain safe and open to international shipping at all times, in accordance with international law, in particular UNCLOS, and where applicable domestic law, and to build upon and enhance existing cooperative arrangements and measures towards this end,

DESIRING FURTHER to continue to enhance the safety, security and environmental protection of the Straits,

HAS AGREED:

- (a) that the work of the TTEG on Safety of Navigation, in enhancing the safety of navigation and in protecting the marine environment in the Straits, should continue to be supported and encouraged;
- (b) to support the continuous efforts of the littoral States and the proposed cooperative mechanism as presented by the littoral States on safety of navigation and environmental protection, which is to promote dialogue and facilitate close cooperation between the littoral States, user States, shipping industry and other stakeholders;
- (c) that the projects presented¹ at the Kuala Lumpur Meeting for enhancing safety of navigation and environmental protection should be supported;
- (d) that the littoral States, user States, the shipping industry and other stakeholders should co-operate towards the establishment of a mechanism for voluntary funding the above projects and the maintenance and renewal of the aids to navigation in the Straits;
- (e) that the littoral States should continue their efforts towards enhancing maritime security in the Straits,

¹ Refer to IMO/KUL 1/3

HAS INVITED the IMO:

- (a) to continue to co-operate with the littoral States and to provide every assistance possible in attracting sponsors for the agreed projects and contributors for the maintenance, repair and replacement of the aids to navigation in the Straits;
- (b) to consider, in consultation with the littoral States, convening further follow-on meetings for the littoral States to identify and prioritize specific needs, and for user States to identify possible assistance and to respond to those specific needs, which may include provision of resources, capacity building, training and technical support, with a view to promote further co-operative measures including possible options for burden sharing.

EXPRESSED DEEP APPRECIATION to the Government of Malaysia for the excellent arrangements made for, the facilities and generous hospitality provided during the Kuala Lumpur Meeting; and to the Governments of the Republic of Indonesia, Malaysia and the Republic of Singapore and the International Maritime Organization for their diligent efforts to prepare for the Kuala Lumpur Meeting and ensure its successful conclusion.



REPUBLIC OF SINGAPORE



INTERNATIONAL MARITIME ORGANIZATION

SINGAPORE MEETING ON THE STRAITS OF
MALACCA AND SINGAPORE: ENHANCING
SAFETY, SECURITY AND ENVIRONMENTAL
PROTECTION

4 - 6 September 2007

Agenda item 4

IMO/SGP 1/4

6 September 2007

ENGLISH ONLY

SINGAPORE STATEMENT

ON

ENHANCEMENT OF SAFETY, SECURITY AND ENVIRONMENTAL PROTECTION IN THE STRAITS OF MALACCA AND SINGAPORE

Singapore on 6 September 2007

The Government of the Republic of Singapore and the International Maritime Organization (hereinafter referred to as “IMO”) convened, pursuant to the decisions of the Meeting on the Straits of Malacca and Singapore: Enhancing Safety, Security and Environmental Protection held in Kuala Lumpur, Malaysia from 18 to 20 September 2006 (hereinafter referred to as “the Kuala Lumpur Meeting”) and of the ninety-seventh session of the Council of the IMO in relation to the Protection of Vital Shipping Lanes, a Meeting on the Straits of Malacca and Singapore: Enhancing Safety, Security and Environmental Protection, which took place in Singapore from 4 to 6 September 2007 (hereinafter referred to as “the Singapore Meeting”). The Singapore Meeting was organized in co-operation with the Government of the Republic of Indonesia and the Government of Malaysia.

The purpose of the Singapore Meeting was to provide a follow-up forum to build on the outcome of the Meeting on the Straits of Malacca and Singapore: Enhancing Safety, Security and Environmental Protection held in Jakarta, Indonesia on 7 and 8 September 2005 (hereinafter referred to as “the Jakarta Meeting”) and the Kuala Lumpur Meeting. During the Singapore Meeting, Indonesia, Malaysia and Singapore (hereinafter referred to collectively as the “littoral States”) presented, *inter alia*: the actions taken by them in enhancing safety, security and environmental protection in the Straits of Malacca and Singapore (hereinafter referred to as “the Straits”) since the Kuala Lumpur Meeting; details on the Co-operative Mechanism they have established following the outline they provided during the Kuala Lumpur Meeting; and the progress made with regard to securing sponsors for the six projects on enhancing the safety of navigation and environmental protection in the Straits they presented during the Kuala Lumpur Meeting. The littoral States, user States and users of the Straits exchanged views on related

matters and the participants were updated on the latest developments following the start of the implementation of the Marine Electronic Highway demonstration project for the Straits.

The Singapore Meeting was attended by Indonesia, Malaysia and Singapore and by delegations from:

ANGOLA	LAO PEOPLE'S DEMOCRATIC
AUSTRALIA	REPUBLIC
BAHAMAS	LIBERIA
BANGLADESH	MYANMAR
BELGIUM	NEW ZEALAND
BRUNEI DARUSSALAM	NORWAY
CAMBODIA	PANAMA
CANADA	PAPUA NEW GUINEA
CHINA	PHILIPPINES
CYPRUS	REPUBLIC OF KOREA
DEMOCRATIC PEOPLE'S	RUSSIAN FEDERATION
REPUBLIC OF KOREA	SAUDI ARABIA
DENMARK	SOUTH AFRICA
FINLAND	SWEDEN
GERMANY	THAILAND
GREECE	TURKEY
INDIA	UKRAINE
ITALY	UNITED ARAB EMIRATES
JAPAN	UNITED KINGDOM OF GREAT BRITAIN
KENYA	AND NORTHERN IRELAND
	UNITED STATES

by a representative from the following United Nations specialized agency:

WORLD BANK GROUP

by observers from the following intergovernmental organization:

INTERNATIONAL HYDROGRAPHIC ORGANIZATION (IHO)

and by observers from the following non-governmental organizations:

INTERNATIONAL CHAMBER OF SHIPPING (ICS)
 INTERNATIONAL TRANSPORT WORKERS' FEDERATION (ITF)
 INTERNATIONAL ASSOCIATION OF MARINE AIDS TO NAVIGATION
 AND LIGHTHOUSE AUTHORITIES (IALA)
 BIMCO
 OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF)
 INTERNATIONAL FEDERATION OF SHIPMASTERS' ASSOCIATIONS (IFSMA)
 INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS
 (INTERTANKO)
 THE INTERNATIONAL GROUP OF P & I ASSOCIATIONS (P & I Clubs)

THE INTERNATIONAL TANKER OWNERS POLLUTION FEDERATION LTD
(ITOPF)
SOCIETY OF INTERNATIONAL GAS TANKER AND TERMINAL OPERATORS
LIMITED (SIGTTO)
INTERNATIONAL PARCEL TANKERS ASSOCIATION (IPTA)
MALACCA STRAIT COUNCIL
THE NIPPON FOUNDATION
ASIAN SHIPOWNERS' FORUM

The SINGAPORE MEETING,

UPHOLDING the Batam Joint Statement, adopted on 2 August 2005 by the Fourth Tripartite Ministerial Meeting of the Littoral States on the Straits of Malacca and Singapore,

RECALLING the achievements of the Jakarta and Kuala Lumpur Meetings and upholding also the Jakarta Statement¹, adopted on 8 September 2005 by the Jakarta Meeting, and the Kuala Lumpur Statement², adopted on 20 September 2006 by the Kuala Lumpur Meeting,

RECALLING ALSO that the Straits are located within the territorial sea of Indonesia, Malaysia and Singapore and within the continental shelf and the exclusive economic zone of Malaysia and Indonesia and are straits used for international navigation as defined in the United Nations Convention on the Law of the Sea (hereinafter referred to as "UNCLOS"),

RECOGNIZING the continued strategic importance of the Straits for regional and global seaborne trade and economy and the need to ensure that they remain safe and open to shipping at all times,

RECOGNIZING ALSO the importance of enhancing the safety, security and protection of the marine environment of the Straits and the possibility that unlawful acts committed therein may have a negative impact on the flow of traffic there-through; and, consequently, on trade and the economy,

RECOGNIZING FURTHER the equally important role of the Straits in contributing towards the development and enrichment of the economies and people of other States,

AFFIRMING the sovereignty, sovereign rights, jurisdiction and territorial integrity of the littoral States over the Straits, as provided for under international law, in particular UNCLOS, and that the primary responsibility over the safety of navigation, environmental protection and maritime security in the Straits lies with the littoral States,

COMMENDING the sustained efforts and achievements of the Tripartite Technical Experts Group on Safety of Navigation (hereinafter referred to as "TTEG on Safety of Navigation") in enhancing safety of navigation and protection of the marine environment in the Straits,

¹ The Jakarta Statement is set out in document IMO/JKT 1/2. It is also found in document C/ES.23/8 (Secretary-General), annex 2 and in document IMO/SGP 1/INF.3, annex 5.

² The Kuala Lumpur Statement is set out in document IMO/KUL 1/4. It is also found in document C 97/12 (Secretary-General), annex 2 and in document IMO/SGP 1/INF.3, annex 6.

ACKNOWLEDGING that the TTEG on Safety of Navigation is an effective mechanism for advancing future co-operation efforts among interested parties consonant with article 43 of UNCLOS,

ACKNOWLEDGING ALSO the role of IMO, the user States, the shipping industry and other stakeholders in co-operating with the littoral States in promoting and enhancing safety of navigation and environmental protection, and in ensuring the uninterrupted flow of traffic in the Straits,

WELCOMING the progress made in relation to the implementation of the Marine Electronic Highway Demonstration Project for the Straits of Malacca and Singapore,

COMMENDING the significant and effective efforts of the littoral States since the Kuala Lumpur Meeting in enhancing safety of navigation, environmental protection and security in the Straits; and, in particular, in reducing substantially the number of shipping incidents, oil spill incidents from ships, and armed robbery and other unlawful acts against ships,

COMMENDING FURTHER the joint efforts of the armed forces of the littoral States in contributing to the security of the Straits, through the Malacca Straits Sea Patrols and the “Eyes in the Sky” maritime air patrols, as formalized by the signing of the Malacca Straits Patrol Standard Operating Procedures on 21 April 2006,

WELCOMING WITH APPRECIATION the establishment by the littoral States of the Co-operative Mechanism between the littoral States and user States on safety of navigation and environmental protection in the Straits³, consisting of three components namely the Co-operation Forum, the Project Co-ordination Committee and the Aids to Navigation Fund (hereinafter referred to as “Co-operative Mechanism”), the aim of which is to facilitate regular discussions, exchange of information and co-operation between littoral States, user States, the shipping industry and other stakeholders for the enhancement of safety of navigation in and protection of the environment of the Straits,

RECOGNIZING that the establishment of the Co-operative Mechanism represents, notwithstanding the role of the TTEG on Safety of Navigation, a historic breakthrough and landmark achievement in co-operation between States bordering a strait used for international navigation and user States as well as other interested stakeholders, and, for the first time, brings to realization the spirit and intent of article 43 of the UNCLOS,

RECOGNIZING ALSO the importance and potential of the Co-operative Mechanism in promoting dialogue and co-operation on matters pertaining to the enhancement of the safety of navigation in, and the protection of the environment of, the Straits,

NOTING WITH APPRECIATION that the Information Sharing Centre (hereinafter referred to as “the Centre”) of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia is already operational and welcoming the indication of preparedness of Indonesia and Malaysia to co-operate with the Centre,

NOTING WITH APPRECIATION ALSO the contribution States and other stakeholders have made and continue to make towards the enhancement of the safety of navigation in, and the protection of the environment of, the Straits,

³ Refer to document IMO/SGP 1/2.1/1 (Indonesia, Malaysian and Singapore).

RECALLING that the littoral States identified, during the Kuala Lumpur Meeting, six projects aimed at enhancing the safety of navigation in, and the protection of the environment of, the Straits (hereinafter referred to as “the six projects”) and that the Kuala Lumpur Meeting has agreed that the implementations of the six projects should be supported,

COMMENDING the States which initiated a process, or made arrangements, for supporting or undertaking the implementation of some of the six projects or parts thereof,

DESIRING that the Straits remain safe and open to international shipping at all times, in accordance with international law, in particular UNCLOS, and, where applicable, domestic law, and to build upon and enhance existing co-operative arrangements and measures towards this end,

DESIRING FURTHER to continue to enhance the safety, security and environmental protection of the Straits,

HAS AGREED that:

- (a) the work of the TTEG on Safety of Navigation, in enhancing the safety of navigation and in protecting the marine environment in the Straits, should continue to be supported and encouraged;
- (b) the Co-operative Mechanism, which comprises of the Co-operation Forum, the Project Co-ordination Committee and the Aids to Navigation Fund, should be supported and encouraged;
- (c) user States, shipping industry and other stakeholders should seek to participate in and endeavour to contribute, on a voluntary basis, to the work of the Co-operative Mechanism;
- (d) the projects⁴ presented at the Kuala Lumpur Meeting or parts thereof which have not yet attracted sponsors should be supported; and
- (e) the littoral States should continue their efforts towards enhancing maritime security in the Straits and that such efforts should be supported and encouraged;

HAS INVITED the IMO to participate in the Co-operative Mechanism, to continue to co-operate with the littoral States and to provide every assistance possible in attracting sponsors for the projects presented during the Kuala Lumpur Meeting and contributors for the establishment, maintenance, repair and replacement of the aids to navigation in the Straits;

EXPRESSED DEEP APPRECIATION to the Government of the Republic of Singapore for the excellent arrangements made for, and for the facilities and generous hospitality provided during, the Singapore Meeting; and to the Governments of the Republic of Indonesia, Malaysia and the Republic of Singapore and the International Maritime Organization for their diligent efforts to prepare for the Singapore Meeting and ensure its successful conclusion.

⁴ Refer to document IMO/KUL 1/3. The littoral States have updated the projects presented during the Kuala Lumpur Meeting and the updated versions of the projects are provided in document IMO/SGP 1/3 (Indonesia, Malaysia and Singapore).

**SUPPRESSION OF TERRORISTS
AND
WEAPONS OF MASS DESTRUCTION
AT SEA**

**Security Council**

Distr.: General
28 April 2004

Resolution 1540 (2004)

**Adopted by the Security Council at its 4956th meeting,
on 28 April 2004**

The Security Council,

Affirming that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery,* constitutes a threat to international peace and security,

Reaffirming, in this context, the Statement of its President adopted at the Council's meeting at the level of Heads of State and Government on 31 January 1992 (S/23500), including the need for all Member States to fulfil their obligations in relation to arms control and disarmament and to prevent proliferation in all its aspects of all weapons of mass destruction,

Recalling also that the Statement underlined the need for all Member States to resolve peacefully in accordance with the Charter any problems in that context threatening or disrupting the maintenance of regional and global stability,

Affirming its resolve to take appropriate and effective actions against any threat to international peace and security caused by the proliferation of nuclear, chemical and biological weapons and their means of delivery, in conformity with its primary responsibilities, as provided for in the United Nations Charter,

Affirming its support for the multilateral treaties whose aim is to eliminate or prevent the proliferation of nuclear, chemical or biological weapons and the importance for all States parties to these treaties to implement them fully in order to promote international stability,

* Definitions for the purpose of this resolution only:

Means of delivery: missiles, rockets and other unmanned systems capable of delivering nuclear, chemical, or biological weapons, that are specially designed for such use.

Non-State actor: individual or entity, not acting under the lawful authority of any State in conducting activities which come within the scope of this resolution.

Related materials: materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery.

Welcoming efforts in this context by multilateral arrangements which contribute to non-proliferation,

Affirming that prevention of proliferation of nuclear, chemical and biological weapons should not hamper international cooperation in materials, equipment and technology for peaceful purposes while goals of peaceful utilization should not be used as a cover for proliferation,

Gravely concerned by the threat of terrorism and the risk that non-State actors* such as those identified in the United Nations list established and maintained by the Committee established under Security Council resolution 1267 and those to whom resolution 1373 applies, may acquire, develop, traffic in or use nuclear, chemical and biological weapons and their means of delivery,

Gravely concerned by the threat of illicit trafficking in nuclear, chemical, or biological weapons and their means of delivery, and related materials,* which adds a new dimension to the issue of proliferation of such weapons and also poses a threat to international peace and security,

Recognizing the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security,

Recognizing that most States have undertaken binding legal obligations under treaties to which they are parties, or have made other commitments aimed at preventing the proliferation of nuclear, chemical or biological weapons, and have taken effective measures to account for, secure and physically protect sensitive materials, such as those required by the Convention on the Physical Protection of Nuclear Materials and those recommended by the IAEA Code of Conduct on the Safety and Security of Radioactive Sources,

Recognizing further the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery,

Encouraging all Member States to implement fully the disarmament treaties and agreements to which they are party,

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Determined to facilitate henceforth an effective response to global threats in the area of non-proliferation,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides that* all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

2. *Decides also* that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for

terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

3. *Decides also* that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

(b) Develop and maintain appropriate effective physical protection measures;

(c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

4. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, for a period of no longer than two years, a Committee of the Security Council, consisting of all members of the Council, which will, calling as appropriate on other expertise, report to the Security Council for its examination, on the implementation of this resolution, and to this end calls upon States to present a first report no later than six months from the adoption of this resolution to the Committee on steps they have taken or intend to take to implement this resolution;

5. *Decides* that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons;

6. *Recognizes* the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;

7. *Recognizes* that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;

8. *Calls upon* all States:

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties;

(c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

9. *Calls upon* all States to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery;

10. Further to counter that threat, *calls upon* all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;

11. *Expresses* its intention to monitor closely the implementation of this resolution and, at the appropriate level, to take further decisions which may be required to this end;

12. *Decides* to remain seized of the matter.



INTERNATIONAL CONFERENCE ON THE
REVISION OF THE SUA TREATIES
Agenda item 8

LEG/CONF.15/21
1 November 2005
Original: ENGLISH

**ADOPTION OF THE FINAL ACT AND ANY INSTRUMENTS, RECOMMENDATIONS
AND RESOLUTIONS RESULTING FROM THE WORK OF THE CONFERENCE**

**PROTOCOL OF 2005 TO THE CONVENTION FOR THE SUPPRESSION OF
UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION**

Text adopted by the Conference

Preamble

THE STATES PARTIES to this Protocol,

BEING PARTIES to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation done at Rome on 10 March 1988,

ACKNOWLEDGING that terrorist acts threaten international peace and security,

MINDFUL of resolution A.924(22) of the Assembly of the International Maritime Organization requesting the revision of existing international legal and technical measures and the consideration of new measures in order to prevent and suppress terrorism against ships and to improve security aboard and ashore, and thereby to reduce the risk to passengers, crews and port personnel on board ships and in port areas and to vessels and their cargoes,

CONSCIOUS of the Declaration on Measures to Eliminate International Terrorism, annexed to United Nations General Assembly resolution 49/60 of 9 December 1994, in which, *inter alia*, the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

NOTING United Nations General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed thereto,

RECALLING resolutions 1368 (2001) and 1373 (2001) of the United Nations Security Council, which reflect international will to combat terrorism in all its forms and manifestations, and which assigned tasks and responsibilities to States, and taking into account the continued threat from terrorist attacks,

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RECALLING ALSO resolution 1540 (2004) of the United Nations Security Council, which recognizes the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery,

RECALLING FURTHER the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973; the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979; the Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979 and amendments thereto adopted on 8 July 2005; the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988; the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991; the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997; the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999, and the International Convention for the Suppression of Acts of Nuclear Terrorism adopted by the General Assembly of the United Nations on 13 April 2005,

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea done at Montego Bay, on 10 December 1982, and of the customary international law of the sea,

CONSIDERING resolution 59/46 of the United Nations General Assembly, which reaffirmed that international co-operation as well as actions by States to combat terrorism should be conducted in conformity with the principles of the Charter of the United Nations, international law and relevant international conventions, and resolution 59/24 of the United Nations General Assembly, which urged States to become parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol, invited States to participate in the review of those instruments by the Legal Committee of the International Maritime Organization to strengthen the means of combating such unlawful acts, including terrorist acts, and also urged States to take appropriate measures to ensure the effective implementation of those instruments, in particular through the adoption of legislation, where appropriate, aimed at ensuring that there is a proper framework for responses to incidents of armed robbery and terrorist acts at sea,

CONSIDERING ALSO the importance of the amendments to the International Convention for the Safety of Life at Sea, 1974, and of the International Ship and Port Facility Security (ISPS) Code, both adopted by the 2002 Conference of Contracting Governments to that Convention, in establishing an appropriate international technical framework involving co-operation between Governments, Government agencies, national and local administrations and the shipping and port industries to detect security threats and take preventative measures against security incidents affecting ships or port facilities used in international trade,

CONSIDERING FURTHER resolution 58/187 of the United Nations General Assembly, which reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law,

BELIEVING that it is necessary to adopt provisions supplementary to those of the Convention, to suppress additional terrorist acts of violence against the safety and security of international maritime navigation and to improve its effectiveness,

HAVE AGREED as follows:

ARTICLE 1

For the purposes of this Protocol:

- 1 “Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
- 2 “Organization” means the International Maritime Organization (IMO).
- 3 “Secretary-General” means the Secretary-General of the Organization.

ARTICLE 2

Article 1 of the Convention is amended to read as follows:

Article 1

- 1 For the purposes of this Convention:
 - (a) “ship” means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.
 - (b) “transport” means to initiate, arrange or exercise effective control, including decision-making authority, over the movement of a person or item.
 - (c) “serious injury or damage” means:
 - (i) serious bodily injury; or
 - (ii) extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or
 - (iii) substantial damage to the environment, including air, soil, water, fauna, or flora.

- (d) “BCN weapon” means:
 - (i) “biological weapons”, which are:
 - (1) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or
 - (2) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.
 - (ii) “chemical weapons”, which are, together or separately:
 - (1) toxic chemicals and their precursors, except where intended for:
 - (A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or
 - (B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
 - (C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
 - (D) law enforcement including domestic riot control purposes,as long as the types and quantities are consistent with such purposes;
 - (2) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (ii)(1), which would be released as a result of the employment of such munitions and devices;
 - (3) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii)(2).
 - (iii) nuclear weapons and other nuclear explosive devices.

- (e) “toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.
- (f) “precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.
- (g) “Organization” means the International Maritime Organization (IMO).
- (h) “Secretary-General” means the Secretary-General of the Organization.

2 For the purposes of this Convention:

- (a) the terms “place of public use”, “State or government facility”, “infrastructure facility”, and “public transportation system” have the same meaning as given to those terms in the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997; and
- (b) the terms “source material” and “special fissionable material” have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency (IAEA), done at New York on 26 October 1956.

ARTICLE 3

The following text is added as article 2bis of the Convention:

Article 2bis

- 1 Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international human rights, refugee and humanitarian law.
- 2 This Convention does not apply to the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law.
- 3 Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London and Moscow on 1 July 1968, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London and Moscow on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993, of States Parties to such treaties.

ARTICLE 4

- 1 The *chapeau* of article 3, paragraph 1 of the Convention is replaced by the following text:**

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

- 2 Article 3, paragraph 1(f) of the Convention is replaced by the following text:**

(f) communicates information which that person knows to be false, thereby endangering the safe navigation of a ship.

- 3 Article 3, paragraph 1(g) of the Convention is deleted.**

- 4 Article 3, paragraph 2 of the Convention is replaced by the following text:**

- 2 Any person also commits an offence if that person threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraphs 1 (b), (c), and (e), if that threat is likely to endanger the safe navigation of the ship in question.

- 5 The following text is added as article 3*bis* of the Convention:**

Article 3*bis*

- 1 Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:
- (a) when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act:
 - (i) uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or
 - (ii) discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a)(i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
 - (iii) uses a ship in a manner that causes death or serious injury or damage; or
 - (iv) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a)(i), (ii) or (iii); or

- (b) transports on board a ship:
 - (i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or
 - (ii) any BCN weapon, knowing it to be a BCN weapon as defined in article 1; or
 - (iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; or
 - (iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose.

2 It shall not be an offence within the meaning of this Convention to transport an item or material covered by paragraph 1(b)(iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, paragraph 1(b)(iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where:

- (a) the resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and,
- (b) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty.

6 The following text is added as article 3ter of the Convention:

Article 3ter

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence set forth in article 3, 3bis or 3quater or an offence set forth in any treaty listed in the Annex, and intending to assist that person to evade criminal prosecution.

7 The following text is added as article 3^{quater} of the Convention:

Article 3^{quater}

Any person also commits an offence within the meaning of this Convention if that person:

- (a) unlawfully and intentionally injures or kills any person in connection with the commission of any of the offences set forth in article 3, paragraph 1, article 3^{bis}, or article 3^{ter}; or
- (b) attempts to commit an offence set forth in article 3, paragraph 1, article 3^{bis}, paragraph 1(a)(i), (ii) or (iii), or subparagraph (a) of this article; or
- (c) participates as an accomplice in an offence set forth in article 3, article 3^{bis}, article 3^{ter}, or subparagraph (a) or (b) of this article; or
- (d) organizes or directs others to commit an offence set forth in article 3, article 3^{bis}, article 3^{ter}, or subparagraph (a) or (b) of this article; or
- (e) contributes to the commission of one or more offences set forth in article 3, article 3^{bis}, article 3^{ter} or subparagraph (a) or (b) of this article, by a group of persons acting with a common purpose, intentionally and either:
 - (i) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in article 3, 3^{bis} or 3^{ter}; or
 - (ii) in the knowledge of the intention of the group to commit an offence set forth in article 3, 3^{bis} or 3^{ter}.

ARTICLE 5

1 Article 5 of the Convention is replaced by the following text:

Each State Party shall make the offences set forth in articles 3, 3^{bis}, 3^{ter} and 3^{quater} punishable by appropriate penalties which take into account the grave nature of those offences.

2 The following text is added as article 5^{bis} of the Convention:

Article 5^{bis}

- 1 Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in this Convention. Such liability may be criminal, civil or administrative.
- 2 Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

- 3 Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

ARTICLE 6

- 1 **The *chapeau* of article 6, paragraph 1 of the Convention is replaced by the following text:**

- 1 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, *3bis*, *3ter* and *3quater* when the offence is committed:

- 2 **Article 6, paragraph 3 of the Convention is replaced by the following text:**

- 3 Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

- 3 **Article 6, paragraph 4 of the Convention is replaced by the following text:**

- 4 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, *3bis*, *3ter* and *3quater* in cases where the alleged offender is present in its territory and it does not extradite the alleged offender to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

ARTICLE 7

The following text is added as the Annex to the Convention:

ANNEX

- 1 Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
- 2 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
- 3 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
- 4 International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
- 5 Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979.
- 6 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.

- 7 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.
- 8 International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.
- 9 International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

ARTICLE 8

1 Article 8, paragraph 1 of the Convention is replaced by the following text:

- 1 The master of a ship of a State Party (the “flag State”) may deliver to the authorities of any other State Party (the “receiving State”) any person who the master has reasonable grounds to believe has committed an offence set forth in article 3, *3bis*, *3ter*, or *3quater*.

2 The following text is added as article *8bis* of the Convention:

Article *8bis*

- 1 States Parties shall co-operate to the fullest extent possible to prevent and suppress unlawful acts covered by this Convention, in conformity with international law, and shall respond to requests pursuant to this article as expeditiously as possible.
- 2 Each request pursuant to this article should, if possible, contain the name of the suspect ship, the IMO ship identification number, the port of registry, the ports of origin and destination, and any other relevant information. If a request is conveyed orally, the requesting Party shall confirm the request in writing as soon as possible. The requested Party shall acknowledge its receipt of any written or oral request immediately.
- 3 States Parties shall take into account the dangers and difficulties involved in boarding a ship at sea and searching its cargo, and give consideration to whether other appropriate measures agreed between the States concerned could be more safely taken in the next port of call or elsewhere.
- 4 A State Party that has reasonable grounds to suspect that an offence set forth in article 3, *3bis*, *3ter* or *3quater* has been, is being or is about to be committed involving a ship flying its flag, may request the assistance of other States Parties in preventing or suppressing that offence. The States Parties so requested shall use their best endeavours to render such assistance within the means available to them.
- 5 Whenever law enforcement or other authorized officials of a State Party (“the requesting Party”) encounter a ship flying the flag or displaying marks of registry of another State Party (“the first Party”) located seaward of any State’s territorial sea, and the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship has been, is or is about to be involved in the commission of an offence set forth in article 3, *3bis*, *3ter* or *3quater*, and the requesting Party desires to board,

- (a) it shall request, in accordance with paragraphs 1 and 2 that the first Party confirm the claim of nationality, and
- (b) if nationality is confirmed, the requesting Party shall ask the first Party (hereinafter referred to as “the flag State”) for authorization to board and to take appropriate measures with regard to that ship which may include stopping, boarding and searching the ship, its cargo and persons on board, and questioning the persons on board in order to determine if an offence set forth in article 3, *3bis*, *3ter* or *3quater* has been, is being or is about to be committed, and
- (c) the flag State shall either:
 - (i) authorize the requesting Party to board and to take appropriate measures set out in subparagraph (b), subject to any conditions it may impose in accordance with paragraph 7; or
 - (ii) conduct the boarding and search with its own law enforcement or other officials; or
 - (iii) conduct the boarding and search together with the requesting Party, subject to any conditions it may impose in accordance with paragraph 7; or
 - (iv) decline to authorize a boarding and search.

The requesting Party shall not board the ship or take measures set out in subparagraph (b) without the express authorization of the flag State.

- (d) Upon or after depositing its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secretary-General that, with respect to ships flying its flag or displaying its mark of registry, the requesting Party is granted authorization to board and search the ship, its cargo and persons on board, and to question the persons on board in order to locate and examine documentation of its nationality and determine if an offence set forth in article 3, *3bis*, *3ter* or *3quater* has been, is being or is about to be committed, if there is no response from the first Party within four hours of acknowledgement of receipt of a request to confirm nationality.
- (e) Upon or after depositing its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secretary-General that, with respect to ships flying its flag or displaying its mark of registry, the requesting Party is authorized to board and search a ship, its cargo and persons on board, and to question the persons on board in order to determine if an offence set forth in article 3, *3bis*, *3ter* or *3quater* has been, is being or is about to be committed.

The notifications made pursuant to this paragraph can be withdrawn at any time.

- 6 When evidence of conduct described in article 3, *3bis*, *3ter* or *3quater* is found as the result of any boarding conducted pursuant to this article, the flag State may authorize the requesting Party to detain the ship, cargo and persons on board pending receipt of disposition instructions from the flag State. The requesting Party shall promptly inform the flag State of the results of a boarding, search, and detention conducted pursuant to this article. The requesting Party shall also promptly inform the flag State of the discovery of evidence of illegal conduct that is not subject to this Convention.
- 7 The flag State, consistent with the other provisions of this Convention, may subject its authorization under paragraph 5 or 6 to conditions, including obtaining additional information from the requesting Party, and conditions relating to responsibility for and the extent of measures to be taken. No additional measures may be taken without the express authorization of the flag State, except when necessary to relieve imminent danger to the lives of persons or where those measures derive from relevant bilateral or multilateral agreements.
- 8 For all boardings pursuant to this article, the flag State has the right to exercise jurisdiction over a detained ship, cargo or other items and persons on board, including seizure, forfeiture, arrest and prosecution. However, the flag State may, subject to its constitution and laws, consent to the exercise of jurisdiction by another State having jurisdiction under article 6.
- 9 When carrying out the authorized actions under this article, the use of force shall be avoided except when necessary to ensure the safety of its officials and persons on board, or where the officials are obstructed in the execution of the authorized actions. Any use of force pursuant to this article shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances.
- 10 Safeguards:
 - (a) Where a State Party takes measures against a ship in accordance with this article, it shall:
 - (i) take due account of the need not to endanger the safety of life at sea;
 - (ii) ensure that all persons on board are treated in a manner which preserves their basic human dignity, and in compliance with the applicable provisions of international law, including international human rights law;
 - (iii) ensure that a boarding and search pursuant to this article shall be conducted in accordance with applicable international law;
 - (iv) take due account of the safety and security of the ship and its cargo;
 - (v) take due account of the need not to prejudice the commercial or legal interests of the flag State;

- (vi) ensure, within available means, that any measure taken with regard to the ship or its cargo is environmentally sound under the circumstances;
 - (vii) ensure that persons on board against whom proceedings may be commenced in connection with any of the offences set forth in article 3, *3bis*, *3ter* or *3quater* are afforded the protections of paragraph 2 of article 10, regardless of location;
 - (viii) ensure that the master of a ship is advised of its intention to board, and is, or has been, afforded the opportunity to contact the ship's owner and the flag State at the earliest opportunity; and
 - (ix) take reasonable efforts to avoid a ship being unduly detained or delayed.
- (b) Provided that authorization to board by a flag State shall not *per se* give rise to its liability, States Parties shall be liable for any damage, harm or loss attributable to them arising from measures taken pursuant to this article when:
- (i) the grounds for such measures prove to be unfounded, provided that the ship has not committed any act justifying the measures taken; or
 - (ii) such measures are unlawful or exceed those reasonably required in light of available information to implement the provisions of this article.
- States Parties shall provide effective recourse in respect of such damage, harm or loss.
- (c) Where a State Party takes measures against a ship in accordance with this Convention, it shall take due account of the need not to interfere with or to affect:
- (i) the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or
 - (ii) the authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the ship.
- (d) Any measure taken pursuant to this article shall be carried out by law enforcement or other authorized officials from warships or military aircraft, or from other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect and, notwithstanding articles 2 and *2bis*, the provisions of this article shall apply.

- (e) For the purposes of this article “law enforcement or other authorized officials” means uniformed or otherwise clearly identifiable members of law enforcement or other government authorities duly authorized by their government. For the specific purpose of law enforcement under this Convention, law enforcement or other authorized officials shall provide appropriate government-issued identification documents for examination by the master of the ship upon boarding.
- 11 This article does not apply to or limit boarding of ships conducted by any State Party in accordance with international law, seaward of any State’s territorial sea, including boardings based upon the right of visit, the rendering of assistance to persons, ships and property in distress or peril, or an authorization from the flag State to take law enforcement or other action.
- 12 States Parties are encouraged to develop standard operating procedures for joint operations pursuant to this article and consult, as appropriate, with other States Parties with a view to harmonizing such standard operating procedures for the conduct of operations.
- 13 States Parties may conclude agreements or arrangements between them to facilitate law enforcement operations carried out in accordance with this article.
- 14 Each State Party shall take appropriate measures to ensure that its law enforcement or other authorized officials, and law enforcement or other authorized officials of other States Parties acting on its behalf, are empowered to act pursuant to this article.
- 15 Upon or after depositing its instrument of ratification, acceptance, approval or accession, each State Party shall designate the authority, or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of nationality, and for authorization to take appropriate measures. Such designation, including contact information, shall be notified to the Secretary-General within one month of becoming a Party, who shall inform all other States Parties within one month of the designation. Each State Party is responsible for providing prompt notice through the Secretary-General of any changes in the designation or contact information.

ARTICLE 9

Article 10, paragraph 2 is replaced by the following text:

- 2 Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

ARTICLE 10

1 Article 11, paragraphs 1, 2, 3 and 4 are replaced by the following text:

- 1 The offences set forth in articles 3, *3bis*, *3ter* and *3quater* shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
- 2 If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in articles 3, *3bis*, *3ter* and *3quater*. Extradition shall be subject to the other conditions provided by the law of the requested State Party.
- 3 States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in articles 3, *3bis*, *3ter* and *3quater* as extraditable offences between themselves, subject to the conditions provided by the law of the requested State Party.
- 4 If necessary, the offences set forth in articles 3, *3bis*, *3ter* and *3quater* shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

2 The following text is added as article 11*bis*, of the Convention:

Article 11*bis*

None of the offences set forth in article 3, *3bis*, *3ter* or *3quater* shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

3 The following text is added as article 11*ter* of the Convention:

Article 11*ter*

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 3, *3bis*, *3ter* or *3quater* or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

ARTICLE 11**1 Article 12, paragraph 1 of the Convention is replaced by the following text:**

- 1 States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in articles 3, *3bis*, *3ter* and *3quater*, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2 The following text is added as article 12bis of the Convention:**Article 12bis**

- 1 A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 3, *3bis*, *3ter* or *3quater* may be transferred if the following conditions are met:
 - (a) the person freely gives informed consent; and
 - (b) the competent authorities of both States agree, subject to such conditions as those States may deem appropriate.
- 2 For the purposes of this article:
 - (a) the State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
 - (b) the State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
 - (c) the State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
 - (d) the person transferred shall receive credit for service of the sentence being served in the State from which the person was transferred for time spent in the custody of the State to which the person was transferred.
- 3 Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever that person's nationality, shall not be prosecuted or detained or subjected to any other restriction of personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to that person's departure from the territory of the State from which such person was transferred.

ARTICLE 12

Article 13 of the Convention is replaced by the following text:

- 1 States Parties shall co-operate in the prevention of the offences set forth in articles 3, *3bis*, *3ter* and *3quater*, particularly by:
 - (a) taking all practicable measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;
 - (b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in articles 3, *3bis*, *3ter* and *3quater*.
- 2 When, due to the commission of an offence set forth in article 3, *3bis*, *3ter* or *3quater*, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 13

Article 14 of the Convention is replaced by the following text:

Any State Party having reason to believe that an offence set forth in article 3, *3bis*, *3ter* or *3quater* will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 14

Article 15, paragraph 3 of the Convention is replaced by the following text:

- 3 The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the Organization, to other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 15

Interpretation and application

- 1 The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.
- 2 Articles 1 to 16 of the Convention, as revised by this Protocol, together with articles 17 to 24 of this Protocol and the Annex thereto, shall constitute and be called the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention).

ARTICLE 16

The following text is added as article 16*bis* of the Convention:

Final clauses of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005

The final clauses of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 shall be articles 17 to 24 of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. References in this Convention to States Parties shall be taken to mean references to States Parties to that Protocol.

FINAL CLAUSES

ARTICLE 17

Signature, ratification, acceptance, approval and accession

- 1 This Protocol shall be open for signature at the Headquarters of the Organization from 14 February 2006 to 13 February 2007 and shall thereafter remain open for accession.
- 2 States may express their consent to be bound by this Protocol by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
- 3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- 4 Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

ARTICLE 18

Entry into force

- 1 This Protocol shall enter into force ninety days following the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession with the Secretary-General.
- 2 For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions in paragraph 1 for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

Denunciation

- 1 This Protocol may be denounced by any State Party at any time after the date on which this Protocol enters into force for that State.
- 2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
- 3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the deposit of the instrument with the Secretary-General.

ARTICLE 20

Revision and amendment

- 1 A conference for the purpose of revising or amending this Protocol may be convened by the Organization.
- 2 The Secretary-General shall convene a conference of States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.
- 3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 21

Declarations

- 1 Upon depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the Annex may declare that, in the application of this Protocol to the State Party, the treaty shall be deemed not to be included in article 3*ter*. The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the Secretary-General of this fact.
- 2 When a State Party ceases to be a party to a treaty listed in the Annex, it may make a declaration as provided for in this article, with respect to that treaty.
- 3 Upon depositing its instrument of ratification, acceptance, approval or accession, a State Party may declare that it will apply the provisions of article 3*ter* in accordance with the principles of its criminal law concerning family exemptions of liability.

ARTICLE 22

Amendments to the Annex

- 1 The Annex may be amended by the addition of relevant treaties that:
 - (a) are open to the participation of all States;
 - (b) have entered into force; and
 - (c) have been ratified, accepted, approved or acceded to by at least twelve States Parties to this Protocol.
- 2 After the entry into force of this Protocol, any State Party thereto may propose such an amendment to the Annex. Any proposal for an amendment shall be communicated to the Secretary-General in written form. The Secretary-General shall circulate any proposed amendment that meets the requirements of paragraph 1 to all members of the Organization and seek from States Parties to this Protocol their consent to the adoption of the proposed amendment.
- 3 The proposed amendment to the Annex shall be deemed adopted after more than twelve of the States Parties to this Protocol consent to it by written notification to the Secretary-General.
- 4 The adopted amendment to the Annex shall enter into force thirty days after the deposit with the Secretary-General of the twelfth instrument of ratification, acceptance or approval of such amendment for those States Parties to this Protocol that have deposited such an instrument. For each State Party to this Protocol ratifying, accepting or approving the amendment after the deposit of the twelfth instrument with the Secretary-General, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

ARTICLE 23

Depositary

- 1 This Protocol and any amendments adopted under articles 20 and 22 shall be deposited with the Secretary-General.
- 2 The Secretary-General shall:
 - (a) inform all States which have signed this Protocol or acceded to this Protocol of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - (ii) the date of the entry into force of this Protocol;
 - (iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;

- (iv) any communication called for by any article of this Protocol;
 - (v) any proposal to amend the Annex which has been made in accordance with article 22, paragraph 2;
 - (vi) any amendment deemed to have been adopted in accordance with article 22, paragraph 3;
 - (vii) any amendment ratified, accepted or approved in accordance with article 22, paragraph 4, together with the date on which that amendment shall enter into force; and
- (b) transmit certified true copies of this Protocol to all States which have signed or acceded to this Protocol.
- 3 As soon as this Protocol enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 24

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this fourteenth day of October two thousand and five.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

PROTOCOLS OF 2005 TO THE CONVENTION CON-
CERNING SAFETY OF MARITIME NAVIGATION AND
TO THE PROTOCOL CONCERNING SAFETY OF
FIXED PLATFORMS ON THE CONTINENTAL SHELF

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL OF 2005 TO THE CONVENTION FOR THE SUPPRESSION
OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVI-
GATION (THE “2005 SUA PROTOCOL”) AND THE PROTOCOL OF
2005 TO THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL
ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON
THE CONTINENTAL SHELF (THE “2005 FIXED PLATFORMS PRO-
TOCOL”) (TOGETHER, “THE PROTOCOLS”), ADOPTED BY THE
INTERNATIONAL MARITIME ORGANIZATION DIPLOMATIC CON-
FERENCE IN LONDON ON OCTOBER 14, 2005, AND SIGNED BY
THE UNITED STATES OF AMERICA ON FEBRUARY 17, 2006



OCTOBER 1, 2007.—Treaty was read the first time, and together with
the accompanying papers, referred to the Committee on Foreign Rela-
tions and ordered to be printed for the use of the Senate.

U.S. GOVERNMENT PRINTING OFFICE

69-118

WASHINGTON : 2007

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *October 1, 2007.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the “2005 SUA Protocol”) and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the “2005 Fixed Platforms Protocol”) (together, “the Protocols”), adopted by the International Maritime Organization Diplomatic Conference in London on October 14, 2005, and signed by the United States of America on February 17, 2006. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Protocols.

The Protocols are an important component in the international campaign to prevent and punish maritime terrorism and the proliferation of weapons of mass destruction and promote the aims of the Proliferation Security Initiative. They establish a legal basis for international cooperation in the investigation, prosecution, and extradition of those who commit or aid terrorist acts or trafficking in weapons of mass destruction aboard ships at sea or on fixed platforms.

The Protocols establish the first international treaty framework for criminalizing certain terrorist acts, including using a ship or fixed platform in a terrorist activity, transporting weapons of mass destruction or their delivery systems and related materials, and transporting terrorist fugitives. The Protocols require Parties to criminalize these acts under their domestic laws, to cooperate to prevent and investigate suspected crimes under the Protocols, and to extradite or submit for prosecution persons accused of committing, attempting to commit, or aiding in the commission of such offenses. The 2005 SUA Protocol also provides for a shipboarding regime based on flag state consent that will provide an international legal basis for interdiction at sea of weapons of mass destruction, their delivery systems and related materials, and terrorist fugitives.

I recommend that the Senate give early and favorable consideration to the Protocols, subject to certain understandings that are described in the accompanying report of the Department of State.

GEORGE W. BUSH.

(III)

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 29, 2007.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, subject to understandings set forth in the enclosed overview, the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the 2005 SUA Protocol) and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the 2005 Fixed Platforms Protocol) (together, "the Protocols") adopted by the International Maritime Organization (IMO) on October 14, 2005, and signed on behalf of the United States on February 17, 2006. The Protocols are an important component in the international campaign to prevent and punish maritime terrorism and the proliferation of weapons of mass destruction. They provide a legal basis for international cooperation in the investigation, prosecution, and extradition of those who commit or aid terrorist acts or trafficking in weapons of mass destruction aboard ships at sea or on fixed platforms.

As of March 29, 2007, 18 States have signed both the 2005 SUA Protocol and the 2005 Fixed Platforms Protocol, subject to ratification. In addition, two States have acceded to the 2005 SUA Protocol. A detailed overview analysis of the provisions is enclosed with this Report. Recommended legislation necessary to implement the Protocols is being prepared for separate submission to the Congress. The Departments of Justice, Homeland Security, and Defense join in recommending that these Protocols be transmitted to the Senate at an early date for its advice and consent to ratification, subject to the understandings to Articles 3 and 4(5) of the 2005 SUA Protocol and to Article 2 of the 2005 Fixed Platforms Protocol. I recommend that these Protocols be transmitted to the Senate for its advice and consent to ratification.

Respectfully submitted,

CONDOLEEZZA RICE.

Enclosures: As stated.

(V)

PROTOCOL OF 2005 TO THE CONVENTION FOR THE SUPPRESSION OF
UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION
AND PROTOCOL OF 2005 TO THE PROTOCOL FOR THE SUPPRESSION
OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS
LOCATED ON THE CONTINENTAL SHELF

OVERVIEW

The Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (“2005 SUA Protocol”) and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (“2005 Fixed Platforms Protocol”) (together, “the Protocols”) are an important component in the international campaign to prevent and punish maritime terrorism and the proliferation of weapons of mass destruction. The Protocols amend two International Maritime Organization (IMO) counterterrorism agreements to which the United States is party: the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (“the Convention”), and its accompanying protocol, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (“the 1988 Protocol”), both done at Rome, March 10, 1988, S. Treaty Doc. 101–1. The Convention and 1988 Protocol seek to ensure that all individuals who commit acts of terrorism that endanger the safe navigation of a ship or the safety of a fixed platform will be prosecuted in the State in which they are found, or extradited to another State for prosecution. The Convention and 1988 Protocol require States Parties to criminalize certain terrorist acts involving the safety of maritime navigation and fixed platforms, and they create a series of obligations relating to those offenses with the object of bringing the perpetrators to justice.

Following the terrorist attacks of September 11, 2001, the international community recognized the urgent need for a more effective international regime to combat maritime terrorism and to conduct maritime interdictions of weapons of mass destruction. To this end, the United States led the effort to negotiate the Protocols for over three years in the IMO. The resulting Protocols fill several gaps in the existing treaty framework for combating global terrorism. The Protocols require States Parties to criminalize under their domestic laws certain acts, including using a ship or a fixed platform in terrorist activity, transporting weapons of mass destruction (“WMD”), their means of delivery or related materials, and transporting terrorist fugitives. The Protocols also incorporate many of the provisions in recent counterterrorism conventions to which the United States is already a party, such as the 1999 International Convention for the Suppression of the Financing of Terrorism (“Terrorism Financing Convention”), S. Treaty Doc. 106–49, and the 1997 Inter-

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national Convention for the Suppression of Terrorist Bombings (“Terrorist Bombings Convention”), S. Treaty Doc. 106–6. Like prior conventions, the Protocols require Parties to extradite or submit for prosecution persons accused of committing, attempting to commit, or aiding in the commission of such offenses. The 2005 SUA Protocol also creates a shipboarding regime based on flag state consent similar to agreements that the United States has concluded bilaterally as part of the Proliferation Security Initiative (“PSI”) (see www.state.gov/t/isn/cl0390.htm). This shipboarding regime will provide an international legal framework to facilitate interdiction on waters seaward of the territorial sea of any State of WMD, their means of delivery and related materials, and terrorist fugitives.

As of March 29, 2007, 18 States have signed both the 2005 SUA Protocol and the 2005 Fixed Platforms Protocol, subject to ratification. In addition, two States have acceded to the 2005 SUA Protocol. The 2005 SUA Protocol will enter into force 90 days after the date on which 12 States have expressed their consent to be bound. The 2005 Fixed Platforms Protocol will enter into force 90 days following the date on which three States have expressed their consent to be bound. However, the 2005 Fixed Platforms Protocol may not enter into force before the 2005 SUA Protocol enters into force.

Because the 2005 Fixed Platforms Protocol incorporates all of the provisions of the 2005 SUA Protocol, except those relating to transport offenses and the shipboarding regime, which are not relevant in the context of fixed platforms, this report first addresses the provisions of the 2005 SUA Protocol. It then details which of the 2005 SUA Protocol provisions are incorporated into the 2005 Fixed Platforms Protocol, with the intention that the same description of the underlying provisions also applies to their operation in the 2005 Fixed Platform Protocol. Finally, this analysis will also summarize the few additional provisions of the 2005 Fixed Platforms Protocol.

THE 2005 SUA PROTOCOL

Definitions

Article 1 of the 2005 SUA Protocol defines, for the purposes of the Protocol, the terms “Convention,” “Organization,” and “Secretary-General” as the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the IMO, and the IMO Secretary-General, respectively.

Article 2 of the 2005 SUA Protocol amends Article 1 of the Convention to include and define additional terms used in the Convention. “Transport” means to initiate, arrange, or exercise effective control, including decision-making authority, over the movement of a person or item. “Serious injury or damage” means serious bodily injury; extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or substantial damage to the environment, including air, soil, water, fauna, or flora. Article 2 defines “BCN weapons” as biological weapons, chemical weapons, and nuclear weapons and other nuclear explosive devices. The definitions of biological and chemical weapons are drawn from the Convention on the Prohibition of the Development, Production, and

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Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (“BWC”), S. Treaty Doc. 92–29, and the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction (“CWC”) S. Treaty Doc. 103–21. Article 1 also defines “toxic chemical” and “precursor” in the same manner as the CWC. The United States is a party to the BWC and the CWC.

Article 1 also provides that the terms “place of public use,” “State or government facility,” “infrastructure facility,” and “public transportation system” have the same meaning as is given to those terms in the Terrorist Bombings Convention, and that the terms “source material” and “special fissionable material” have the same meaning as is given to those terms in the Statute of the International Atomic Energy Agency (“IAEA”), TIAS 3873. Those definitions are as follows:

- “place of public use” means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public. (Terrorist Bombings Convention, Article 1(5)).
- “State or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties. (Terrorist Bombings Convention, Article 1(1)).
- “infrastructure facility” means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel, or communications. (Terrorist Bombings Convention, Article 1(2)).
- “public transportation system” means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo. (Terrorist Bombings Convention, Article 1(6)).
- “source material” means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the Board of Governors shall from time to time determine; and such other material as the Board of Governors shall from time to time determine. (IAEA Statute, Article XX(3)).
- “special fissionable material” means plutonium-239; uranium-233; uranium enriched in the isotopes 235 or 233; any material containing one or more of the foregoing; and such other fissionable material as the Board of Governors shall from time to time determine; but the term “special fissionable material” does not include source material. (IAEA Statute, Article XX (1)).

Exclusions and exceptions

Article 3 of the 2005 SUA Protocol adds Article 2*bis* to the Convention to address the interaction of the Convention with other rights, obligations, and responsibilities of States and individuals. Paragraph 1 provides that nothing in the Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international human rights, refugee, and humanitarian law. Paragraph 1 is based on the similar provisions contained in Article 19(1) of the Terrorist Bombings Convention and Article 21 of the Terrorism Financing Convention, but adds specific reference to international human rights and refugee law to take into account the interests of seafarers.

Paragraph 2 of Article 2*bis* contains two important exceptions to the applicability of the Convention with respect to activities of armed forces and other military forces of a State. It states that the Convention does not apply to: (i) “the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law”; and (ii) “the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law.” This exception restates similar language in Article 19(2) of the Terrorist Bombings Convention.

The first exception is meant to exclude from the Convention’s scope the activities of national and sub-national armed forces, so long as those activities are in the course of an “armed conflict.” To ensure that suspected offenders cannot claim the benefit of the “armed conflict” exception in Article 2*bis*(2) to avoid extradition or prosecution under the Convention, it would be useful for the United States to articulate an understanding clarifying the scope of this exception, consistent with the understandings it included in its instrument of ratification for the Terrorist Bombings Convention with respect to the similar provision in Article 19(2) of that Convention and in its instrument of ratification for the Terrorism Financing Convention with respect to the reference to the undefined term “armed conflict” in Article 2(1)(b) of that Convention. Both of those understandings were based upon the widely accepted provision in paragraph 2 of Article 1 of Protocol II Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protections of Victims of Non-International Armed Conflicts (“Additional Protocol II”), S. Treaty Doc. 100–2, which states that “armed conflict” does not include “internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.” Including an understanding that specifies the scope of “armed conflict” in a manner consistent with Additional Protocol II would help to counter attempts by terrorists to claim protection from this exception in circumstances for which it is not intended. As in Article 19 of the Terrorist Bombings Convention, Article 2*bis*(1) and (2) use the term “international humanitarian law,” which is not used by the United States and could be subject to varied interpretations. Accordingly, it would be appropriate for the United States to include an understanding that, for the purposes of this Convention, this phrase has the same substantive

meaning as the phrase “law of war.” I therefore recommend that the following understandings to Article 3 of the 2005 SUA Protocol be included in the United States instrument of ratification:

The United States of America understands that the term “armed conflict” in Article 3 of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (which adds, *inter alia*, paragraph 2 of Article 2*bis* to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation) does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.

The United States further understands that the term “international humanitarian law” in Article 3 of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (which adds, *inter alia*, paragraphs 1 and 2 of Article 2*bis* to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation) has the same substantive meaning as the “law of war.”

The United States included substantially identical understandings in its instrument of ratification for the Terrorist Bombings Convention and, with respect to the meaning of “armed conflict,” in its instrument of ratification for the Terrorism Financing Convention.

Given the importance of protecting the flexibility of the United States to conduct legitimate activities against all lawful targets, the second exception in paragraph 2 of Article 2*bis* was also an important objective of the United States when negotiating the Protocols. This provision exempts from the Convention’s application “the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law.” This language is consistent with Article 19(2) of the Terrorist Bombings Convention. Although this exclusion might be thought to be implicit in the context of the Protocols, the negotiators thought it best to articulate the exclusion explicitly. It is intended to exclude all official acts undertaken by U.S. and other State military forces from the scope of criminal offenses. Because the Convention does not impose criminal liability for the official activities of State military forces, it similarly does not impose criminal liability for persons, including non-military, policy-making officials of States, who direct, organize, or otherwise act in support of the activities of State military forces. Recognizing the importance of this provision, I recommend that the following understanding to Article 3 of the 2005 SUA Protocol be included in the United States instrument of ratification:

The United States of America understands that, pursuant to Article 3 of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (which adds, *inter alia*, paragraph 2

of Article 2*bis* to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation), the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, does not apply to:

- (a) the military forces of a State, which are the armed forces of a State organized, trained, and equipped under its internal law for the primary purpose of national defense or security, in the exercise of their official duties;
- (b) civilians who direct or organize the official activities of military forces of a State; or
- (c) civilians acting in support of the official activities of the military forces of a State, if the civilians are under the formal command, control, and responsibility of those forces.

Paragraph 3 of Article 2*bis* states that nothing in the Convention shall affect the rights, obligations, and responsibilities of States Parties under the Treaty on the Non-Proliferation of Nuclear Weapons (“NPT”), TIAS 6839, the CWC, or the BWC. Article 2*bis*(3) is discussed below in the “New Offenses” section under the heading “Non-proliferation provisions.”

Paragraphs 1–4 of Article 4 of the 2005 SUA Protocol make several minor technical amendments to Article 3 of the Convention. Paragraph 1 amends the chapeau of paragraph 1 of Article 3 of the Convention to insert the clarifying words “within the meaning of this Convention.” Paragraph 2 corrects the grammatical construction of subparagraph 1(f) of Article 3 of the Convention. Paragraphs 3 and 4 together delete the accomplice liability provisions from Article 3(1)(g) and 3(2)(a) and (b) of the Convention, because Article 3*quater*, a new provision added by the 2005 SUA Protocol, includes attempt and accomplice liability within a more comprehensive framework for accessory offense liability. Paragraph 4 retains subparagraph 2(c) of Article 3 of the Convention as paragraph 2 of that article.

New offenses

Paragraphs 5–7 of Article 4 of the 2005 SUA Protocol also create four new categories of offenses under the Convention: using a ship in a terrorist offense; transportation of WMD, delivery systems, and related items; transportation of a terrorist fugitive; and accessory offenses. It does so principally by adding three new articles to the Convention: Article 3*bis*, 3*ter*, and 3*quater*.

Article 4(5) of the 2005 SUA Protocol adds Article 3*bis* to the Convention.

Counterterrorism offenses

Article 3*bis*(1)(a) makes it an offense for a person to unlawfully and intentionally, with the purpose of intimidating a population, or compelling a government or an international organization to do or abstain from doing any

act: (i) use against or on a ship or discharge from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; (ii) discharge, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance in such quantity or concentration that causes or is likely to cause death or serious injury or damage; (iii) use a ship in a manner that causes death or serious injury or damage; or (iv) threaten to commit any offense set forth in (i)–(iii).

Non-proliferation provisions

Article 3*bis*(1)(b) makes it an offense to transport on board a ship:

- (i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or abstain from doing any act; or
- (ii) any BCN weapon, knowing it to be a BCN weapon as defined in Article 1; or
- (iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; or
- (iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it be used for such purpose.

These nonproliferation offenses make significant advances to counterterrorism efforts by filling a gap in the existing international treaty framework. The Convention requires criminalization of certain transports of nuclear-related items associated with nuclear weapons or nuclear explosive devices and thus provides a complementary law enforcement element to the nuclear nonproliferation regime. Article 3*bis*(1)(b)(iv) of the Convention goes beyond the NPT in requiring criminalization of the transport of equipment, materials or software or related technology that significantly contributes to the design or manufacture of delivery systems for nuclear weapons (other than those of NPT nuclear-weapon States Parties). The nonproliferation offenses further the objectives of, and are complementary with, the nonproliferation obligations set forth in United Nations Security Council Resolutions 1540 (2004) and 1673 (2006).

Article 3*bis*(2) constitutes an important nonproliferation “savings clause” by specifying that nuclear transport activities remain permissible under the Convention in certain circumstances, notwithstanding the wording of the offenses in Article 3*bis*(1)(b). Article 3*bis*(2) states that it

shall not be an offense within the meaning of the Convention to transport an item or material covered by Article 3*bis*(1)(b)(iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, Article 3*bis*(1)(b)(iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of a State Party to the NPT where: “(a) the resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State Party’s obligations” under the NPT, and “(b) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party” to the NPT, “the holding of such weapon or device is not contrary to that State Party’s obligations under that Treaty.”

This nonproliferation savings clause in Article 3*bis*(2), coupled with the general provision in Article 2*bis*(3) declaring that the Convention shall not affect the rights and obligations of States Parties under the NPT, ensures that the Convention is consistent with the rights and obligations of the States Parties to the NPT (except to the extent that the Convention goes beyond the NPT with respect to nuclear weapon delivery systems). As provided in Article 3*bis*(2), the Convention would not require criminalization of the transport to or from the territory of, or under the control of, an NPT State Party of source or special fissionable material, or of equipment or material especially designed or prepared for the processing, use or production of special fissionable material, as long as the resulting transfer or receipt of such items or materials is not contrary to the NPT obligations of the NPT State Party. This is the case even when a non-NPT party is on the “other end” of the transport to or from (or under the control of) the NPT State Party.

I recommend that the following understanding to Article 3 and Article 4(5) of the 2005 SUA Protocol be included in the United States instrument of ratification to clarify the applicability of new Article 2*bis*(3) and Article 3*bis*(2) of the Convention to the offense in new Article 3*bis*(1)(b)(iii) of the Convention:

The United States of America understands that:

(a) Article 3 and Article 4(5) of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (“the 2005 SUA Protocol”) (which add, *inter alia*, Article 2*bis*(3) and Article 3*bis*(2), respectively, to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (together referred to as “the NPT savings clauses”)) protect from criminality under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, the transport of source or special fissionable material, or equipment or material especially designed or prepared for the processing, use, or production of special fissionable material

- (i) from the territory of, or otherwise under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons (“NPT”) to the territory of, or otherwise under the control of, another NPT State Party or a state that is not an NPT party, and
- (ii) from the territory of, or otherwise under the control of, a state that is not an NPT party to the territory of, or otherwise under the control of, an NPT State Party,

where the resulting transfer or receipt of such items or materials is not contrary to the NPT obligations of the NPT State Party.

(b) The following are illustrative examples of transport of source or special fissionable materials (hereinafter referred to collectively as “nuclear material”) and especially designed or prepared equipment or material that would not constitute offenses under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, by virtue of the savings clauses:

- Transport of nuclear material (from either an NPT State Party or a non-NPT party) to an NPT nuclear-weapon State Party, regardless of whether the nuclear material will be under safeguards in the NPT nuclear-weapon State Party, because the resulting receipt of the item or material is not contrary to the NPT obligations of the nuclear-weapon State Party;
- Transport of nuclear material to a non-nuclear weapon State Party to the NPT for non-nuclear use without safeguards, in accordance with the provisions of the recipient country’s IAEA comprehensive safeguards agreement (INFCIRC 153) allowing for exemption of the nuclear material from safeguards or the non-application or termination of safeguards (*e.g.*, for specified *de minimis* amounts, or use in a non-proscribed military activity which does not require the application of IAEA safeguards or in a non-nuclear use such as the production of alloys or ceramics);
- Transport of nuclear material or especially designed or prepared equipment, as described in Article 4(5) of the 2005 SUA Protocol (which adds Article 3*bis*(1)(b)(iii) to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation), from an NPT State Party to a non-NPT party, so long as the relevant material is for peaceful purposes and placed under IAEA safeguards, consistent with the NPT State Party’s obligations under Article III.2 of the NPT. If the nuclear material transferred for peaceful purposes is subject to an INFCIRC/66 safeguards agreement or other IAEA safeguards arrangement but is not required by that agreement actually to be under safeguards (*e.g.*, under an exemption for *de minimis* amounts or provision permitting safeguards termination for non-nuclear use), the transport would not constitute an offense under Article

3*bis*(1)(b)(iii) of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005.

Transport of terrorist fugitives

Article 4(6) of the 2005 SUA Protocol adds Article 3*ter* to the Convention. Article 3*ter* makes it an offense for a person to unlawfully and intentionally transport another person on board a ship knowing that the person has committed an act that constitutes an offense under Article 3, 3*bis* or 3*quater* or an offense set forth in one of the treaties listed in the Annex to the Convention, and intending to assist that person to evade criminal prosecution. The Annex is added to the Convention by Article 7 of the 2005 SUA Protocol. The inclusion of such an Annex mirrors the approach to the Terrorist Financing Convention. The United States is party to all nine of the instruments currently listed in the Annex, and the provisions for amending the instruments listed in the Annex are provided by Article 22 of the 2005 SUA Protocol, outlined more fully below. Although accessory provisions in the existing counterterrorism conventions and protocols may criminalize aiding and abetting a fugitive to flee during the course of a crime, this provision would criminalize assisting a fugitive to avoid apprehension after the crime has been completed.

Accessory offenses

A comprehensive framework creating criminal liability for accessory offenses is provided in Article 3*quater*, which is added to the Convention by Article 4(7) of the 2005 SUA Protocol. Subparagraph (a) of Article 3*quater* makes it an offense to kill or injure any person in connection with any offense under Articles 3(1), 3*bis*, or 3*ter* of the Convention. Subparagraph (b) of Article 3*quater* makes it an offense to attempt to commit an offense under Articles 3(1), 3*bis*(1)(a)(i)–(iii), or 3*quater*(a) of the Convention. Subparagraphs (c) and (d) of Article 3*quater* make it an offense to participate as an accomplice or organize or direct others in connection with any offense under Articles 3, 3*bis*, 3*ter*, or 3*quater*(a) or (b). Finally, subparagraph (e) of Article 3*quater* makes it an offense to contribute to the commission of one or more offenses under Articles 3, 3*bis*, 3*ter*, or 3*quater*(a) or (b) by a group of persons acting with a common purpose. These accessory offenses are substantially the same as those provided for by the Terrorist Bombings Convention and the Terrorist Financing Convention. They will strengthen the ability of the international community to investigate, prosecute, and extradite those who conspire or otherwise contribute to the commission of offenses under the Convention.

Criminalization and jurisdiction under domestic law

Article 5(1) of the 2005 SUA Protocol modifies Article 5 of the Convention to add the offenses enumerated in Articles 3, *3bis*, *3ter*, and *3quater* to the list of criminal offenses that States Parties must make punishable by appropriate penalties that take into account their grave nature.

Article 5(2) of the 2005 SUA Protocol adds to the Convention a new provision, Article *5bis*, to ensure liability for legal entities as well as persons. Article *5bis* requires States Parties, in accordance with their domestic legal principles, to take the necessary measures to enable a legal entity located in their territory or organized under their laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offense under the Convention. Such liability may be criminal, civil, or administrative and is without prejudice to the criminal liability of individuals having committed the offenses. Further, States Parties must ensure that legal entities held liable for offenses under Article *5bis* are subject to effective, proportionate and dissuasive criminal, civil, or administrative sanctions, which may include monetary sanctions. This provision is identical to Article 5 of the Terrorism Financing Convention.

Article 6 of the 2005 SUA Protocol makes conforming amendments to Article 6 of the Convention, which requires States Parties to establish jurisdiction over the offenses set forth under the Convention. Each State Party is now required to establish jurisdiction over offenses under Articles 3, *3bis*, *3ter*, and *3quater*. Article 8(1) of the 2005 SUA Protocol makes a similar conforming amendment to Article 8, paragraph 1, of the Convention to permit the master of a ship to deliver to the authorities of any other State Party any person who the master has reasonable grounds to believe has committed an offense under Article 3, *3bis*, *3ter*, or *3quater*. Both provisions simply update the Convention provisions to include the full range of offenses under the Convention as revised by the 2005 SUA Protocol.

Innocent parties

The 2005 SUA Protocol was drafted to ensure that innocent seafarers will not be subject to criminal prosecution under the Convention simply for being on board a vessel that was engaged in or used for illegal purposes. This is the case even where the seafarer had mere knowledge of the criminal activity.

The offenses enumerated in Article *3bis*(1)(b) (the transport provisions described above) apply by virtue of the definition of “transport” in Article 2 of the 2005 SUA Protocol (amending Article 1 of the Convention) to those persons who initiate, arrange, or exercise effective control, including decision-making authority, over the movement of a person or item. This definition would exclude from criminal liability seafarers and employees on shore, except in

those rare cases where they are actively engaged in the criminal activity.

The individual offenses added by the 2005 SUA Protocol contain subjective elements that would exclude innocent carriers and seafarers from their reach. For example, under the provision that covers certain dual use items (Article 3*bis*(1)(b)(iv)), the transporter must have the intention that the dual use item will be used in the design, manufacture, or delivery of a BCN weapon. In most situations, a seafarer, for example, would not have the requisite general knowledge and intent, let alone the additional specific intent required under this provision. When containers are ordinarily sealed and loaded at port, a seafarer would not know what is in the containers. In order for a seafarer to be held criminally liable, a prosecuting State must prove, for example, that the seafarer (1) knew what the item was, (2) intentionally initiated, arranged, or exercised effective control, including decision-making authority, over the movement of the item by, for example, smuggling the item on board or placing the item in a container to be loaded on the ship, and (3) intended that the item would be used in the design, manufacture, or delivery of a BCN weapon.

Shipboarding

Article 8(2) of the 2005 SUA Protocol adds Article 8*bis* to the Convention. Article 8*bis* creates a shipboarding regime by establishing a comprehensive set of procedures and protections designed to facilitate the boarding of a vessel suspected of being involved in an offense under the Convention. The boarding procedures do not change existing international maritime law or infringe upon the traditional principle of freedom of navigation. Instead, the procedures eliminate the need to negotiate time-consuming ad hoc boarding arrangements when facing the immediacy of ongoing criminal activity. Additionally, the boarding regime builds upon existing regimes under bilateral and multilateral agreements to which the United States is a party, including agreements with respect to fisheries, narcotics, illegal migrants, and WMD interdiction.

The first three paragraphs of Article 8*bis* set forth general parameters for the shipboarding regime. States Parties must cooperate to the fullest extent possible to prevent and suppress offenses under the Convention, in conformity with international law, and to respond to requests under the boarding regime as expeditiously as possible (paragraph 1). This provision is derived from Article 17(1) of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Vienna Narcotic Drug Convention), S. Treaty Doc. 101-4, and Article 7 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Migrant

Smuggling Protocol), S. Treaty Doc. 108–16. The United States is a party to both Conventions.

Each request should, if possible, contain the name of the suspect ship, the IMO identification number, the port of registry, the ports of origin and destination, and any other relevant information (paragraph 2). In addition, each State Party must take into account the dangers and difficulties involved in boarding a ship at sea and searching its cargo, and give consideration to whether other appropriate measures agreed between the States concerned could be more safely taken in the next port of call or elsewhere (paragraph 3).

The United States will implement its obligations to “co-operate to the fullest extent possible” under Article 8*bis*(1) by designating a competent authority at the national level for making, receiving, processing, and responding to boarding requests under the Convention, as we have done for counternarcotics, migrant, fisheries, WMD interdictions, and other similar law enforcement agreements. The competent authority, who will most likely be the Commandant of the U.S. Coast Guard, will execute its obligations through a national level command or operations center, which will have immediate access to all national vessel registry data, as well as procedures established for real-time U.S. Government coordination, including the Maritime Operational Threat Response Plan. See further the discussion of Article 8*bis*(15) below.

Pursuant to paragraph 4 of Article 8*bis*, if a State Party has reasonable grounds to suspect that an offense under Articles 3, 3*bis*, 3*ter*, or 3*quater* of the Convention has been, is being, or is about to be committed involving a ship flying its flag, it may request the assistance of other States Parties in preventing or suppressing that offense. The States Parties so requested shall use their best endeavors to render such assistance within the means available to them. This provision is derived from Article 17(2) of the 1988 Vienna Narcotic Drug Convention and Article 8(1) of the Migrant Smuggling Protocol. This provision does not obligate the United States to board or take law enforcement actions on foreign flagged ships, except to the extent it is required to use best endeavors to render assistance within the means available to it upon request of a flag State to assist in prevention or suppression of an offense specified under the Convention. The absence of a reference in paragraph 4 to “marks of registry” (both “flying its flag” and “displaying marks of registry” are used in paragraph 5) is of no consequence because each refers to indicia of the nationality of the vessel permissible, as reflected in Articles 5 and 6 of the 1958 Convention on the High Seas (“High Seas Convention”), TIAS 5200, and Articles 91 and 92 of the United Nations Convention on the Law of the Sea, (“Law of the Sea Convention”), S. Treaty Doc. 103–39. See Article 8*bis*(5)(a), (b) and (d).

Paragraph 5 of Article 8*bis* sets forth the procedures for shipboarding. Whenever law enforcement or other authorized officials of a State Party (“the requesting Party”) encounter a ship flying the flag or displaying the marks of registry of another State Party (“the first Party”), located seaward of any State’s territorial sea, and the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship has been, is or is about to be involved in the commission of an offense under Articles 3, 3*bis*, 3*ter*, or 3*quater* of the Convention, and the requesting Party desires to board, it shall take the following steps. It shall request, in accordance with paragraphs 1 and 2, that the first Party confirm the claim of nationality (subparagraph (a)). If nationality is confirmed, the requesting Party shall ask the first Party (hereinafter “the flag State”) for authorization to take appropriate measures, which may include stopping, boarding, and searching the ship, its cargo and persons on board, and questioning the persons on board (subparagraph (b)).

The flag State may, pursuant to subparagraph (c) of Article 8*bis*(5), authorize the requesting Party to board and to take appropriate measures described in subparagraph (b), conduct the boarding and search with its own law enforcement or other officials, conduct the boarding and search together with the requesting Party, or decline to authorize a boarding and search. Paragraph 8*bis*(5)(c) expands on the provisions of Article 17(4) of the 1988 Vienna Narcotic Drug Convention and Article 8(2) of the Migrant Smuggling Protocol. Nothing in Article 8*bis*(5) requires the flag State to provide any such authorization. Moreover, subparagraph (c) makes clear that the requesting Party may not take any measures set forth above without the express authorization of the flag State. A flag State may also impose certain restrictions on the requesting Party’s board and search measures, in accordance with Article 8*bis*(7), discussed more fully below.

A State Party may provide advance consent to board ships flying its flag or displaying its mark of registry pursuant to subparagraphs (d) or (e) of Article 8*bis*(5) by notification to the IMO Secretary-General. A notification pursuant to Article 8*bis*(5)(d) would grant the requesting Party authorization to board and search a ship, its cargo and persons on board, and to question the persons on board in order to locate and examine documentation of its nationality and determine if an offense under Articles 3, 3*bis*, 3*ter*, or 3*quater* of the Convention has been, is being, or is about to be committed, if there is no response from that State Party, within four hours of acknowledgement of its receipt of a request to confirm nationality. Notification pursuant to Article 8*bis*(5)(e) would provide general advance consent for other States Parties to board and search such ships, their cargo and persons on board, and to question the persons on board in order to determine if an offense under Articles 3, 3*bis*, 3*ter*, or 3*quater* of the Conven-

tion has been, is being, or is about to be committed. These optional notifications may be withdrawn at any time. Advance consent pursuant to either subparagraph (d) or (e) is not authorization for detention of the vessel, cargo, or persons on board or any other enforcement action. The United States will not file a notification with the IMO Secretary-General granting either such form of advance consent.

Under paragraph 6 of Article 8*bis*, when the requesting Party boards and finds evidence of the conduct described in Articles 3, 3*bis*, 3*ter* or 3*quater*, the flag State may authorize the requesting Party to detain the ship, cargo, and persons on board pending receipt of disposition instructions from the flag State. The requesting Party must in all cases promptly inform the flag State of the results of a boarding, search, and detention conducted pursuant to Article 8*bis*, including discovery of evidence of illegal conduct that is not subject to the Convention.

Paragraph 7 of Article 8*bis* permits a flag State to subject its authorization under paragraphs 5 or 6 to conditions, including obtaining additional information from the requesting Party and relating to responsibility for and the extent of measures to be taken. This provision builds on the text of Article 17(6) of the 1988 Vienna Narcotic Drug Convention and Article 8(5) of the Migrant Smuggling Protocol. Paragraph 7 also prohibits the requesting State from taking any measures without the express authorization of the flag State, except when necessary to relieve imminent danger to the lives of persons or when otherwise derived from bilateral or multilateral agreements.

Paragraph 8 of Article 8*bis* reaffirms explicitly that, for all boardings under Article 8*bis*, the flag State retains the right to exercise jurisdiction over a detained ship, cargo, or other items and persons on board, including seizure, forfeiture, arrest, and prosecution. However, the flag State may, subject to its constitution and laws, consent to the exercise of jurisdiction by another State Party that has jurisdiction under Article 6 of the Convention.

Paragraph 9 of Article 8*bis* sets forth overarching principles for the use of force by officials acting under the shipboarding regime. It directs States Parties to avoid the use of force “except when necessary to ensure the safety of its officials and persons on board, or where the officials are obstructed in the execution of the authorized actions.” It also specifies that any such use of force “shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances.” The language of Article 8*bis*(9) is drawn from Article 22(1)(f) of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, S. Treaty Doc. 104–24, to which the United States is a party. Article 8*bis*(9) is also similar to use of force provi-

sions in other maritime law enforcement agreements to which the United States is a party. As such, this use of force provision reflects and is consistent with current practice on the use of force in international law and U.S. maritime law enforcement.

Paragraph 10 of Article 8*bis* establishes a number of safeguard provisions to protect seafarers and carriers during the conduct of shipboardings. First, subparagraph (a) sets forth a series of safeguards that a State Party taking measures against a ship must respect. These include taking due account of the need not to endanger the safety of life at sea; treating all persons in a manner that preserves their human dignity and complies with applicable provisions of international law; ensuring that a boarding and search is conducted in accordance with applicable international law; taking due account of the safety and security of the ship and cargo; taking due account of the need not to prejudice the commercial or legal interests of the flag State; ensuring, within available means, that any measure taken with regard to the ship or its cargo is environmentally sound; ensuring that any person on board against whom proceedings may be commenced in connection with offenses under the Convention is guaranteed fair treatment, regardless of location; ensuring that the master of a ship is advised of its intention to board, and is, or has been, afforded the opportunity to contact the ship's owner and the flag State at the earliest opportunity; and taking reasonable efforts to avoid undue detention or delay of the ship. These safeguards build on those contained in Article 17(5) of the 1988 Vienna Narcotic Drug Convention and Article 9 of the Migrant Smuggling Protocol.

Subparagraph (b) of Article 8*bis*(10) establishes a framework for liability and recourse arising from any damage, harm, or loss attributable to States Parties taking measures under Article 8*bis*. It clarifies that authorization to board by a flag State shall not per se give rise to its liability. Liability for damage, harm, or loss as a result of shipboarding activities arises under two circumstances: first, when the grounds for shipboarding measures prove to be unfounded, provided that the ship has not committed any act justifying the measures taken; and second, when such measures are unlawful or unreasonable in light of the available information to implement the provisions of Article 8*bis*. States Parties are obligated to "provide effective recourse in respect of any such damage, harm or loss." This provision does not require a State Party to provide a specific remedy, forum, or venue, and it does not require any form of binding dispute resolution. Accordingly, the manner of "effective recourse" remains at the discretion of each State Party. Article 8*bis*(10)(b) of the Convention is consistent with the claims provisions of existing relevant international treaties, including Article 22(3) of the High Seas Convention, and Article 9(2) of the Migrant Smuggling Protocol. As a matter of policy the United States

compensates innocent people whose property is damaged by Federal officers during maritime law enforcement operations. Congress has established mechanisms that permit the United States Navy (10 U.S. Code 2734, 7622; 32 CFR Part 752) and the United States Coast Guard (10 U.S. Code §§ 2733, 2734; 14 U.S. Code 646; 33 CFR Part 25) to consider and pay meritorious claims for damaged property arising from maritime law enforcement operations. These mechanisms are administrative procedures, rather than judicial remedies, which permit the consideration and payment of meritorious claims by Executive Branch agencies. Accordingly, no new legislation is needed to comply with Article 8*bis*(10)(b).

Subparagraph (c) of Article 8*bis*(10) requires any State Party that takes measures against a ship in accordance with the Convention to take due account of the need not to interfere with the rights and obligations and exercise of jurisdiction of coastal States in accordance with the international law of the sea, and the authority of flag States to exercise jurisdiction and control in administrative, technical and social matters involving the ship. This provision builds upon Article 17(11) of the 1988 Vienna Drug Convention, Article 94(1) of the Law of the Sea Convention, and Article 9(3) of the Migrant Smuggling Protocol.

Subparagraphs (d) and (e) of Article 8*bis*(10) designate who may conduct shipboardings consistent with the Convention. Article 8*bis*(10)(d) requires that any shipboarding measure must be carried out by law enforcement or other authorized officials from warships or military aircraft, or from other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect and, notwithstanding Articles 2 and 2*bis* of the Convention, the provisions of Article 8*bis* will apply. This provision reflects the accepted international law rule as set out in Article 17(10) of the 1988 Vienna Narcotic Drug Convention, Article 9(4) of the Migrant Smuggling Protocol, Articles 21 and 23(4) of the High Seas Convention, and Articles 107 and 111(5) of the Law of the Sea Convention and is consistent with U.S. practice. Article 8*bis*(10)(e) defines “law enforcement or other authorized officials” as “uniformed or otherwise clearly identifiable members of law enforcement or other government authorities duly authorized by their government.” For the purposes of shipboarding under the Convention, these officials must provide appropriate government-issued identification documents for examination by the master of the ship upon boarding.

The shipboarding provisions under the Convention do not apply to or limit boarding of ships conducted by any State Party in accordance with international law, seaward of any State’s territorial sea. Paragraph 11 of Article 8*bis* confirms this understanding of the Convention’s applicability. Other lawful shipboarding measures include, but are not limited to, the right of approach and visit, bellig-

erent rights under the law of war, self-defense, the enforcement of United Nations Security Council Resolutions, actions taken pursuant to specific bilateral or multilateral instruments such as counter-narcotics agreements, the rendering of assistance to persons, ships, and property in peril, authorization from the flag State to take action, or the historic role of the armed forces in law enforcement activities on the high seas. In addition, the United States has often employed its military forces abroad to protect U.S. citizens and to enforce provisions of U.S. law. Article 8*bis* would not affect these rights.

Paragraph 12 of Article 8*bis* encourages States Parties to develop standard operating procedures for joint operations and consult, as appropriate, with other States Parties with a view to harmonizing such standard operating procedures. Paragraph 13 allows States Parties to conclude agreements or arrangements between themselves to facilitate law enforcement operations carried out pursuant to Article 8*bis*. This provision is adapted from Article 17(9) of the 1988 Vienna Narcotic Drug Convention and Article 17 of the Migrant Smuggling Protocol. Paragraph 14 requires each State Party to take appropriate measures to ensure that law enforcement or other authorized officials acting on its behalf are empowered to conduct shipboarding activities and take other appropriate measures pursuant to Article 8*bis*.

Finally, paragraph 15 of Article 8*bis* directs each State Party to designate the appropriate authority or authorities to receive and respond to requests for assistance, confirmation of nationality and authorization to take appropriate measures. This designation, including contact information of the authority or authorities, must be notified to the IMO Secretary-General within one month of becoming a Party. The IMO Secretary-General will inform all other States Parties within one month of such designation. Each State Party is responsible for providing prompt notice through the IMO Secretary-General of any changes in the designation or contact information. This provision is adapted from Article 17(7) of the 1988 Vienna Narcotic Drug Convention and Article 8(6) of the Migrant Smuggling Protocol. As previously mentioned during the discussion of Article 8*bis*(1), the United States will implement its obligations by designating a competent authority at the national level, most likely the Commandant of the U.S. Coast Guard, which will execute our obligations through a national level command or operations center in accordance with established procedures, including the Maritime Operational Threat Response Plan, as we have done for other similar law enforcement agreements.

Article 9 of the 2005 SUA Protocol amends Article 10, paragraph 2, of the Convention by adding specific reference to international law including international human rights law. This amendment is intended to enhance further the safeguards for seafarers. As revised, Article 10(2)

of the Convention would provide that any person who is taken into custody or otherwise subject to proceedings under the Convention shall be guaranteed fair treatment, including all rights and guarantees under the law of the State in which that person is present, “as well as applicable provisions of international law, including international human rights law.” This additional text already appears in Article 17 of the Terrorism Financing Convention and in Article 14 of the Terrorist Bombings Convention.

Extradition

Article 10 of the 2005 SUA Protocol makes several revisions to the extradition scheme established under the Convention.

Article 10(1) of the 2005 SUA Protocol revises the first four paragraphs of Article 11 of the Convention to incorporate the offenses set forth in Articles 3, *3bis*, *3ter*, and *3quater* of the Convention into the extradition regime. These provisions, designating the offenses under the Convention as extraditable offenses between States Parties, simply update the extradition obligations to include the new offense articles.

Article 10(2) of the 2005 SUA Protocol adds a new provision to the Convention, Article *11bis*, which states that none of the offenses under the Convention shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offense. Accordingly, a request for extradition or mutual legal assistance may not be refused on the sole ground that it is a political offense or an offense connected with a political offense or an offense inspired by political motives. Article *11bis* thus provides a useful narrowing of the ability to invoke the political offense exception in response to requests for extradition for offenses under the Convention. Many modern U.S. bilateral extradition treaties already contain provisions that bar application of the political offense exception to extradition under multilateral conventions to which similar “prosecute or extradite” obligations apply. Like similar provisions in Article 14 of the Terrorism Financing Convention and Article 11 of the Terrorist Bombings Convention, Article *11bis* builds on this trend by making the restriction on the invocation of the political offense exception for requests based on offenses under Articles 3, *3bis*, *3ter*, and *3quater* a matter of general application, rather than dependent on the terms of individual bilateral law enforcement treaties between the States Parties.

Article 10(3) of the 2005 SUA Protocol adds Article *11ter* to the Convention, which provides that the Convention does not impose an obligation to extradite or afford mutual legal assistance if the requested State Party has substantial grounds for believing that such request for extradition or mutual legal assistance has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin, political

opinion, or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons. This article is similar to provisions already included in a number of existing UN counterterrorism treaties, including Article 12 of the Terrorist Bombings Convention and Article 15 of the Terrorism Financing Convention.

Mutual legal assistance

Article 11(1) of the 2005 SUA Protocol makes conforming changes to Article 12(1) of the Convention, which maintains States Parties' obligations to afford one another assistance in connection with criminal proceedings brought for offenses under the Convention. The amended provision updates the terms of assistance to encompass the new categories of offenses under the Convention as amended by the 2005 SUA Protocol, but it does not change the substantive language describing the degree of assistance required.

Article 11(2) of the 2005 SUA Protocol does, however, establish a system to enhance the assistance that States Parties may provide to each other in connection with offenses under the Convention. It provides for a new article, Article 12*bis*, to govern the transfer of individuals in the custody of one State Party to provide assistance to another State Party in connection with an investigation or prosecution for offenses under the Convention.

Paragraph 1 of Article 12*bis* provides that a person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offenses set forth in Articles 3, 3*bis*, 3*ter*, and 3*quater* may be transferred, if two conditions are met. First, the person in custody must freely give informed consent to be transferred (subparagraph (a)). Second, the competent authorities of both States must agree upon the transfer, subject to such conditions as those States may deem appropriate (subparagraph (b)). Similar provisions for the temporary transfer of persons in custody of one State Party to another State Party are included in Article 16 of the Terrorism Financing Convention, Article 13 of the Terrorist Bombings Convention, and numerous bilateral mutual legal assistance treaties to which the United States is a party.

Paragraph 2 of Article 12*bis* details certain rights and obligations of a State to which a person is transferred pursuant to Article 12*bis*. Under subparagraph (a), the State to which the person is transferred shall have the authority and obligation to keep the transferred person in custody, unless otherwise requested or authorized by the State from which the person was transferred. Subparagraph (b) requires the State to which the person is transferred to implement without delay its obligation to return the person

to the custody of the State from which the person was transferred as agreed in advance, or as otherwise agreed, by the competent authorities of both States. Subparagraph (c) states that return of a person transferred under Article 12*bis* shall not require initiation of extradition proceedings. Finally, subparagraph (d) requires that the person transferred receive credit for service of the sentence being served in the State from which the person was transferred for time spent in the custody of the State to which the person was transferred.

Paragraph 3 of Article 12*bis* establishes a default rule that a person transferred pursuant to Article 12*bis*, whatever that person's nationality, shall not be prosecuted, detained, or subjected to any other restriction of personal liberty in the territory of the State to which that person is transferred for acts or convictions prior to that person's departure from the territory of the transferring State. However, the State Party from which the person was transferred pursuant to Article 12*bis* may agree otherwise, in which case this default rule will not impair the agreement between the State from which the person is transferred and the State to which the person is transferred.

Article 12 of the 2005 SUA Protocol makes conforming changes to Article 13 of the Convention to incorporate references to the new offenses. As amended, Article 13 would provide that States Parties shall cooperate in the prevention of offenses set forth in Articles 3, 3*bis*, 3*ter*, and 3*quater* by taking all practicable measures to prevent preparation in their respective territories for the commission of such offenses and by exchanging information and coordinating measures to prevent the commission of such offenses. Article 13 also would provide that any State Party shall be bound to exercise all possible efforts to avoid undue delay or detention of a ship, its passengers, crew or cargo when the passage of that ship has been delayed or interrupted due to the commission of an offense under Articles 3, 3*bis*, 3*ter* or 3*quater*.

Articles 13 and 14 of the 2005 SUA Protocol make conforming amendments to Article 14 and Article 15, paragraph 3, of the Convention to make those provisions consistent with the new articles and terminology added to the Convention by the 2005 SUA Protocol. These provisions govern information sharing under the Convention with respect to any offense or suspected offenses under the Convention.

Interpretation and application

Article 15 of the 2005 SUA Protocol provides that the Convention and the 2005 SUA Protocol shall be read and interpreted together as one single instrument. It further provides that Articles 1 to 16 of the Convention, as amended by the 2005 SUA Protocol, together with Articles 17 to 24 of the 2005 SUA Protocol and the Annex, "shall constitute and be called together the Convention for the Sup-

pression of Unlawful Acts against the Safety of Maritime Navigation, 2005, (2005 SUA Convention).”

Final clauses

Article 16 of the 2005 SUA Protocol adds a new provision to the Convention, Article 16*bis*, which states that the final clauses of the 2005 SUA Convention shall be Articles 17–24 of the 2005 SUA Protocol, and that references in the 2005 SUA Convention to States Parties shall mean States Parties to the 2005 SUA Protocol. Articles 17 and 18 of the 2005 SUA Protocol detail the requirements for signature, ratification, acceptance, approval, accession, and entry into force. Article 17 provides that the 2005 SUA Protocol shall be open for signature from February 14, 2006 to February 13, 2007 and shall thereafter remain open for accession. (The United States signed the Protocol on February 17, 2006.) Paragraph 2 of this article provides that States may express their consent to be bound by: signature without reservation as to ratification, acceptance or approval; signature subject to ratification, acceptance, or approval followed by ratification, acceptance or approval; or accession. Under paragraph 3, ratification, acceptance, approval or accession are to be effected by the deposit of an instrument to that effect with the IMO Secretary-General. Paragraph 4 provides that only States that are parties to the Convention may become parties to the Protocol. Article 18 provides that the 2005 SUA Protocol will enter into force 90 days after the date on which 12 States have expressed their consent to be bound. For each State that ratifies, accepts, approves, or accedes to the treaty after the deposit of the twelfth instrument, the 2005 SUA Protocol will enter into force on the ninetieth day after the date of deposit of that State’s instrument.

Article 19 of the 2005 SUA Protocol allows any State Party to denounce the 2005 SUA Protocol at any time after the date on which it enters into force for that State. Denunciation shall be effected by the deposit of an instrument of denunciation with the IMO Secretary-General and shall take effect one year, or such longer period as the State Party may specify in the instrument of denunciation, after the deposit of the instrument with the IMO Secretary-General.

Amendments

Article 20 of the 2005 SUA Protocol establishes the procedures for revising and amending the Protocol. The IMO Secretary-General will convene a conference to revise or amend the Protocol at the request of one third of the States Parties or 10 States Parties, whichever figure is higher. Any instrument of ratification, acceptance, approval, or accession deposited after entry into force of an amendment to the 2005 SUA Protocol is to be deemed to apply to the Protocol as amended. Pursuant to Article 16, these procedures would also apply to amendments to the

2005 SUA Convention. (Amendments to the Annex are dealt with in Article 22, discussed below.)

Declarations

Article 21 of the 2005 SUA Protocol outlines several permissible declarations with respect to the Annex incorporating other counterterrorism treaties into the Convention under Article 3*ter*. Article 21 allows any State Party that is not a party to a treaty listed in the Annex to declare that, in the application of the 2005 SUA Protocol to the State Party, that treaty shall be deemed not to be included in Article 3*ter*. As discussed above, Article 3*ter* of the Convention criminalizes the transport of a terrorist fugitive suspected of committing an offense under the Convention or any of the treaties listed in the Annex. However, this declaration shall cease to have effect as soon as such treaty enters into force for that State Party, which shall notify the IMO Secretary-General of such entry into force. In addition, if a State Party ceases to be a party to any of the treaties listed in the Annex, it may make a declaration as provided for in Article 21 with respect to that treaty. Finally, Article 21(3) allows a State Party to declare that it will apply the provisions of Article 3*ter* “in accordance with the principles of its criminal law concerning family exemptions of liability.” This provision makes allowance for some States that provide defenses under domestic law from prosecution for family members who otherwise could be charged with harboring fugitives. The Administration does not propose any declarations under Article 21 to accompany its instrument of ratification.

Annexed List of Treaties

Article 22 of the 2005 SUA Protocol relates to the category of offenses covered under Article 3*ter* to the Convention, criminalizing the transport of terrorist fugitives. It establishes a mechanism for expanding the scope of the Convention by adding new treaties to the Annex. Paragraph 1 of Article 22 states that the Annex may be amended by the addition of relevant treaties that: are open to the participation of all States; have entered into force; and have been ratified, accepted, approved or acceded to by at least 12 States Parties to the 2005 SUA Protocol. After the 2005 SUA Protocol enters into force, any State Party may propose such an amendment to the Annex by communicating it to the IMO Secretary-General in written form. The IMO Secretary-General will circulate any proposed amendment that meets the requirements of Article 22(1) to all members of the IMO and seek from States Parties to the 2005 SUA Protocol their consent to adoption of the proposed amendment. Article 22(3) declares that the proposed amendment shall be deemed adopted after more than 12 of the States Parties to the 2005 SUA Protocol consent to it by written notification to the IMO Secretary-General. However, under Article 22(4), a State Party will

not be bound with respect to such additional treaty unless it deposits an instrument of ratification, acceptance or approval for that amendment with the IMO Secretary-General. An adopted amendment shall enter into force, for those States Parties that have consented to be bound, 30 days after the deposit with the IMO Secretary-General of the twelfth instrument of ratification, acceptance or approval of the amendment. Thereafter, the amendment shall enter into force for any other State Party on the thirtieth day after the deposit of its own instrument of ratification, acceptance or approval. The amendment mechanism under Article 22 of the 2005 SUA Protocol ensures both that the scope of the Convention can evolve to encompass additional terrorist activity, as may be agreed by the international community, and that the scope of the Convention is not expanded with respect to a particular State Party without that State Party's explicit agreement.

Under this provision, the United States expects to deposit an instrument of acceptance of such an amendment if the treaty that is the subject of the amendment has entered into force for the United States with the advice and consent of the Senate. Otherwise, any amendment to the Annex that the United States proposes to accept would be submitted to the Senate for its advice and consent.

Depositary

Article 23 of the 2005 SUA Protocol designates the IMO Secretary-General as the Depositary of the 2005 SUA Protocol and any amendments adopted under Articles 20 and 22 of the 2005 SUA Protocol, and sets forth the duties of the Depositary.

Official languages

Article 24 of the 2005 SUA Protocol provides the six languages for the official texts of the 2005 SUA Protocol.

THE 2005 FIXED PLATFORMS PROTOCOL

Article 1 of the 2005 Fixed Platforms Protocol defines the terms "1988 Protocol," "Organization," and "Secretary-General" as the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, the IMO, and the IMO Secretary-General, respectively.

Article 2 of the 2005 Fixed Platforms Protocol amends Article 1, paragraph 1 of the 1988 Protocol, to incorporate all of the substantive provisions of the 2005 SUA Convention, except those that address transport offenses and the shipboarding regime, which are not relevant in the context of fixed platforms. Specifically, Article 1, paragraphs 1(c), (d), (e), (f), (g), (h) and 2(a), Articles 2*bis*, 5, 5*bis*, and 7, and Articles 10 to 16, including Articles 11*bis*, 11*ter*, and 12*bis*, of the 2005 SUA Convention shall apply *mutatis mutandis* to the offenses set forth in Articles 2, 2*bis*, and 2*ter* of the 1988 Protocol, as amended by the 2005 Fixed

Platforms Protocol (hereinafter referred to as the “2005 SUA Fixed Platforms Protocol”) where such offenses are committed on board or against fixed platforms located on the continental shelf. These provisions include, *inter alia*: the definition of new terms; the savings clauses regarding the effect of the Protocols on other rights, obligations and responsibilities of States Parties; the obligation to make offenses punishable under domestic law; the establishment of liability for legal entities; the guarantee of fair treatment; revisions to the extradition regime, including the provision circumscribing use of the political offense exception for offenses under the Convention; the framework for transfer of persons in custody; and the obligations to assist with criminal investigations, share information, and prevent preparation for the commission of offenses under the Convention.

Because Article 2 of the 2005 Fixed Platforms Protocol incorporates provisions of the 2005 SUA Convention that were amended and added by the 2005 SUA Protocol, I propose that similar understandings be included in the U.S. instrument of ratification for the 2005 Fixed Platforms Protocol as are recommended above for the corresponding provisions of the 2005 SUA Protocol. These understandings read as follows:

The United States of America understands that the term “armed conflict,” as used in paragraph 2 of Article 2*bis* of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, and incorporated by Article 2 of the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.

The United States further understands that the term “international humanitarian law,” as used in paragraphs 1 and 2 of Article 2*bis* of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, and incorporated by Article 2 of the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, has the same substantive meaning as the “law of war.”

The United States of America further understands that, pursuant to paragraph 2 of Article 2*bis* of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, as incorporated by Article 2 of the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005, does not apply to:

(a) the military forces of a State, which are the armed forces of a State organized, trained and equipped under its internal law for the primary purpose of national defense or security, in the exercise of their official duties;

(b) civilians who direct or organize the official activities of military forces of a State; or

(c) civilians acting in support of the official activities of the military forces of a State, if the civilians are under the formal command, control, and responsibility of those forces.

For a more detailed discussion of these proposed understandings, please refer to the corresponding discussion in the 2005 SUA Protocol section of this Overview.

Article 3 of the 2005 Fixed Platforms Protocol makes several conforming amendments to Article 2 of the 1988 Protocol. Article 3(1) restates subparagraph 1(d) of Article 2 of the 1988 Protocol as the final subparagraph of that article, while Article 3(2) deletes subparagraph 1(e) of the 1988 Protocol. Together with Article 3(2) of the 2005 Fixed Platforms Protocol, Article 3(3) removes the attempt and accomplice liability provisions from Article 2 (subparagraph 1(e) and subparagraphs 2(a) and (b)) of the 1988 Protocol, because Article *2ter*, a new provision added by the 2005 Fixed Platforms Protocol (discussed below), includes attempt and accomplice liability within a more comprehensive framework for accessory offense liability. Article 3(3) of the 2005 Fixed Platforms Protocol retains subparagraph 2(c) of Article 2 of the 1988 Protocol as paragraph 2 of that article.

Article 4 of the 2005 Fixed Platforms Protocol adds two new provisions, Articles *2bis* and *2ter*, to the 1988 Protocol to provide the same regime of liability for offenses under the 1988 Protocol, including accessory offenses, as those contained in Article *3bis* and *3quater* of the 2005 SUA Convention. These provisions provide that it shall be an offense to conduct such acts against or on a fixed platform, rather than on or against a ship as in the 2005 SUA Convention.

Article 5 of the 2005 Fixed Platforms Protocol makes conforming amendments to Article 3 of the 1988 Protocol to incorporate the new offenses. Article 5(1) of the 2005 Fixed Platforms Protocol amends Article 3(1) of the 1988 Protocol to require each State Party to take such measures as necessary to establish jurisdiction over the offenses set forth in Articles 2, *2bis*, and *2ter* when the offense is committed either against or on board a fixed platform while it is located on the continental shelf of that State or by a national of that State. Article 5(2) of the 2005 Fixed Platforms Protocol makes conforming amendments to Article 3, paragraph 3 of the 1988 Protocol in accordance with new terminology under the 2005 Fixed Platforms Protocol. Finally, Article 5(3) of the 2005 Fixed Platforms Protocol makes conforming amendments to Article 3, paragraph 4

of the 1988 Protocol to require each State Party to take such measures as may be necessary to establish its jurisdiction over the offenses set forth in Articles 2, *2bis*, and *2ter*, when the alleged offender is in its territory and it does not extradite the alleged offender to any of the States Parties that have established jurisdiction in accordance with the 2005 Fixed Platforms Protocol. Each of these amendments to Article 3 simply updates the provisions to incorporate the new articles provided by the 2005 Fixed Platforms Protocol.

Interpretation and application

Article 6 of the 2005 Fixed Platforms Protocol states that the 1988 Protocol and the 2005 Fixed Platforms Protocol shall “be read and interpreted together as one single instrument.” It further states that Articles 1 to 4 of the 1988 Protocol, as revised by the 2005 Fixed Platforms Protocol, together with Articles 8 to 13 of the 2005 Fixed Platforms Protocol, “shall constitute and be called together the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005, (2005 SUA Fixed Platforms Protocol).”

Final clauses

Article 7 of the 2005 Fixed Platforms Protocol adds a new provision, Article *4bis*, which makes Articles 8 to 13 of the 2005 Fixed Platform Protocol the final clauses of the 2005 SUA Fixed Platforms Protocol. It further states that references in the 2005 SUA Fixed Platforms Protocol to States Parties shall mean States Parties to the 2005 Fixed Platforms Protocol. Articles 8 and 9 of the 2005 Fixed Platforms Protocol describe the requirements for signature, ratification, acceptance, approval, accession and entry into force. Article 8 provides that the 2005 Fixed Platforms Protocol is open for signature from February 14, 2006 to February 13, 2007 and will thereafter remain open for accession. Paragraph 2 of this article provides that States may express their consent to be bound by: signature without reservation as to ratification, acceptance or approval; signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or accession. Under paragraph 3, ratification, acceptance, approval or accession is to be effected by the deposit of an instrument to that effect with the IMO Secretary-General. Paragraph 4 provides that only States that are parties to the 1988 Protocol may become parties to the 2005 Fixed Platforms Protocol. Article 9 provides that the 2005 Fixed Platforms Protocol will enter into force 90 days following the date on which three States have expressed their consent to be bound. However, the 2005 Fixed Platforms Protocol may not enter into force before the 2005 SUA Protocol enters into force. For each State that ratifies, accepts, approves, or accedes after the deposit of the third instrument and after the 2005 SUA Protocol enters into force, the

2005 Fixed Platforms Protocol will enter into force on the ninetieth day after the date of deposit of that State's instrument. Article 10 allows any State Party to denounce the 2005 Fixed Platforms Protocol at any time after the date on which it enters into force for that State. Denunciation shall be effected by the deposit of an instrument of denunciation with the IMO Secretary-General and shall take effect one year, or such longer period as the State Party may specify in the instrument of denunciation, after the deposit of the instrument with the IMO Secretary-General.

Article 11 of the 2005 Fixed Platforms Protocol establishes the procedures for revising and amending the 2005 Fixed Platforms Protocol. The IMO Secretary General will convene a conference of States Parties to revise or amend the Protocol at the request of one third of the States Parties or five States Parties, whichever figure is higher. Any instrument of ratification, acceptance, approval or accession deposited after entry into force of an amendment to the 2005 Fixed Platforms Protocol is to be deemed to apply to the Protocol as amended. Pursuant to Article 7, these procedures would also apply to amendments to the 2005 SUA Fixed Platforms Protocol.

Article 12 of the 2005 Fixed Platforms Protocol designates the IMO Secretary-General as the Depositary of the 2005 Fixed Platforms Protocol and any amendments adopted under Article 11 of the 2005 Fixed Platforms Protocol, and sets forth the duties of the Depositary. Article 13 of the 2005 Fixed Platforms Protocol provides the six languages for the official texts of the 2005 Fixed Platforms Protocol.

Implementing legislation

Title 18, U.S. Code sections 2280 and 2281 implement the Convention and the 1988 Protocol. Legislation necessary to implement the 2005 Protocols is being prepared for separate submission to the Congress.

The Departments of Justice, Homeland Security and Defense join in recommending that the 2005 Protocols be transmitted to the Senate at an early date for its advice and consent to their ratification, subject to the understandings previously described.

Proliferation Security Initiative:

Statement of Interdiction Principles

September 4, 2003

The Proliferation Security Initiative (PSI) is a response to the growing challenge posed by the proliferation of weapons of mass destruction (WMD), their delivery systems, and related materials worldwide. The PSI builds on efforts by the international community to prevent proliferation of such items, including existing treaties and regimes. It is consistent with and a step in the implementation of the UN Security Council Presidential Statement of January 1992, which states that the proliferation of all WMD constitutes a threat to international peace and security, and underlines the need for member states of the UN to prevent proliferation. The PSI is also consistent with recent statements of the G8 and the European Union, establishing that more coherent and concerted efforts are needed to prevent the proliferation of WMD, their delivery systems, and related materials. PSI participants are deeply concerned about this threat and of the danger that these items could fall into the hands of terrorists, and are committed to working together to stop the flow of these items to and from states and non-state actors of proliferation concern.

The PSI seeks to involve in some capacity all states that have a stake in nonproliferation and the ability and willingness to take steps to stop the flow of such items at sea, in the air, or on land. The PSI also seeks cooperation from any state whose vessels, flags, ports, territorial waters, airspace, or land might be used for proliferation purposes by states and non-state actors of proliferation concern. The increasingly aggressive efforts by proliferators to stand outside or to circumvent existing nonproliferation norms, and to profit from such trade, requires new and stronger actions by the international community. We look forward to working with all concerned states on measures they are able and willing to take in support of the PSI, as outlined in the following set of "Interdiction Principles."

Interdiction Principles for the Proliferation Security Initiative

PSI participants are committed to the following interdiction principles to establish a more coordinated and effective basis through which to impede and stop shipments of WMD, delivery systems, and related materials flowing to and from states and non-state actors of proliferation concern,

consistent with national legal authorities and relevant international law and frameworks, including the UN Security Council. They call on all states concerned with this threat to international peace and security to join in similarly committing to:

1. Undertake effective measures, either alone or in concert with other states, for interdicting the transfer or transport of WMD, their delivery systems, and related materials to and from states and non-state actors of proliferation concern. "States or non-state actors of proliferation concern" generally refers to those countries or entities that the PSI participants involved establish should be subject to interdiction activities because they are engaged in proliferation through: (1) efforts to develop or acquire chemical, biological, or nuclear weapons and associated delivery systems; or (2) transfers (either selling, receiving, or facilitating) of WMD, their delivery systems, or related materials.

2. Adopt streamlined procedures for rapid exchange of relevant information concerning suspected proliferation activity, protecting the confidential character of classified information provided by other states as part of this initiative, dedicate appropriate resources and efforts to interdiction operations and capabilities, and maximize coordination among participants in interdiction efforts.

3. Review and work to strengthen their relevant national legal authorities where necessary to accomplish these objectives, and work to strengthen when necessary relevant international law and frameworks in appropriate ways to support these commitments.

4. Take specific actions in support of interdiction efforts regarding cargoes of WMD, their delivery systems, or related materials, to the extent their national legal authorities permit and consistent with their obligations under international law and frameworks, to include:

a. Not to transport or assist in the transport of any such cargoes to or from states or non-state actors of proliferation concern, and not to allow any persons subject to their jurisdiction to do so.

b. At their own initiative, or at the request and good cause shown by another state, to take action to board and search any vessel flying their flag in their internal waters or territorial seas, or areas beyond the territorial seas of any

other state, that is reasonably suspected of transporting such cargoes to or from states or non-state actors of proliferation concern, and to seize such cargoes that are identified.

c. To seriously consider providing consent under the appropriate circumstances to the boarding and searching of its own flag vessels by other states, and to the seizure of such WMD-related cargoes in such vessels that may be identified by such states.

d. To take appropriate actions to (1) stop and/or search in their internal waters, territorial seas, or contiguous zones (when declared) vessels that are reasonably suspected of carrying such cargoes to or from states or non-state actors of proliferation concern and to seize such cargoes that are identified; and (2) to enforce conditions on vessels entering or leaving their ports, internal waters or territorial seas that are reasonably suspected of carrying such cargoes, such as requiring that such vessels be subject to boarding, search, and seizure of such cargoes prior to entry.

e. At their own initiative or upon the request and good cause shown by another state, to (a) require aircraft that are reasonably suspected of carrying such cargoes to or from states or non-state actors of proliferation concern and that are transiting their airspace to land for inspection and seize any such cargoes that are identified; and/or (b) deny aircraft reasonably suspected of carrying such cargoes transit rights through their airspace in advance of such flights.

f. If their ports, airfields, or other facilities are used as transshipment points for shipment of such cargoes to or from states or non-state actors of proliferation concern, to inspect vessels, aircraft, or other modes of transport reasonably suspected of carrying such cargoes, and to seize such cargoes that are identified.

MARITIME SITUATIONAL AWARENESS



ASSEMBLY
22nd session
Agenda item 9

A 22/Res.917
25 January 2002
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Resolution A.917(22)

**Adopted on 29 November 2001
(Agenda item 9)**

**GUIDELINES FOR THE ONBOARD OPERATIONAL USE OF SHIPBORNE
AUTOMATIC IDENTIFICATION SYSTEMS (AIS)**

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety,

RECALLING ALSO the provisions of regulation V/19 of the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, requiring all ships of 300 gross tonnage and upwards engaged on international voyages and cargo ships of 500 gross tonnage and upwards not engaged on international voyages and passenger ships irrespective of size to be fitted with an automatic identification system (AIS), as specified in SOLAS regulation V/19, paragraph 2.4, taking into account the recommendations adopted by the Organization,

HAVING CONSIDERED the recommendations made by the Maritime Safety Committee at its seventy-third session and by the Sub-Committee on Safety of Navigation at its forty-seventh session,

1. ADOPTS the Guidelines for the onboard operational use of shipborne automatic identification systems (AIS) set out in the Annex to the present resolution;
2. INVITES Governments concerned to take into account these Guidelines when implementing SOLAS regulations V/11, 12 and 19;
3. ALSO INVITES Governments which set regional frequencies requiring manual switching which, from the safety viewpoint, should be limited to temporary situations, to notify the Organization of such areas and designated frequencies, for circulation of that information until 1 April 2002;
4. REQUESTS the Maritime Safety Committee to keep the Guidelines under review and amend them as appropriate.

ANNEX

**GUIDELINES FOR THE ONBOARD OPERATIONAL USE OF
SHIPBORNE AUTOMATIC IDENTIFICATION SYSTEMS (AIS)****PURPOSE**

1 These Guidelines have been developed to promote the safe and effective use of shipborne Automatic Identification Systems (AIS), in particular to inform the mariner about the operational use, limits and potential uses of AIS. Consequently, AIS should be operated taking into account these Guidelines.

2 Before using shipborne AIS, the user should fully understand the principle of the current Guidelines and become familiar with the operation of the equipment, including the correct interpretation of the displayed data. A description of the AIS system, particularly with respect to shipborne AIS (including its components and connections), is contained in Annex 1.

CAUTION

Not all ships carry AIS.

The officer of the watch (OOW) should always be aware that other ships, in particular leisure craft, fishing boats and warships, and some coastal shore stations including Vessel Traffic Service (VTS) centres, might not be fitted with AIS.

The OOW should always be aware that AIS fitted on other ships as a mandatory carriage requirement might, under certain circumstances, be switched off on the master's professional judgement.

3 The internationally-adopted shipborne carriage requirements for AIS are contained in SOLAS regulation V/19. The SOLAS Convention requires AIS to be fitted on certain ships through a phased implementation period spanning from 1st July 2002 to 1st July 2008. In addition, specific vessel types (e.g. warships, naval auxiliaries and ships owned/operated by Governments) are not required to be fitted with AIS. Also, small vessels (e.g. leisure craft, fishing boats) and certain other ships are exempt from carrying AIS. Moreover, ships fitted with AIS might have the equipment switched off. Users are therefore cautioned always to bear in mind that information provided by AIS may not be giving a complete or correct 'picture' of shipping traffic in their vicinity. The guidance in this document on the inherent limitations of AIS and their use in collision avoidance situations (see paragraphs 39 to 43) should therefore be heeded.

OBJECTIVES OF AIS

4 AIS is intended to enhance: safety of life at sea; the safety and efficiency of navigation; and the protection of the marine environment. SOLAS regulation V/19 requires that AIS exchange data ship-to-ship and with shore-based facilities. Therefore, the purpose of AIS is to help identify vessels; assist in target tracking; simplify information exchange (e.g. reduce verbal mandatory ship reporting); and provide additional information to assist situation awareness. In general, data received via AIS will improve the quality of the information available to the OOW, whether at a shore surveillance station or on board a ship. AIS should become a useful source of

supplementary information to that derived from navigational systems (including radar) and therefore an important 'tool' in enhancing situation awareness of traffic confronting users.

DESCRIPTION OF AIS

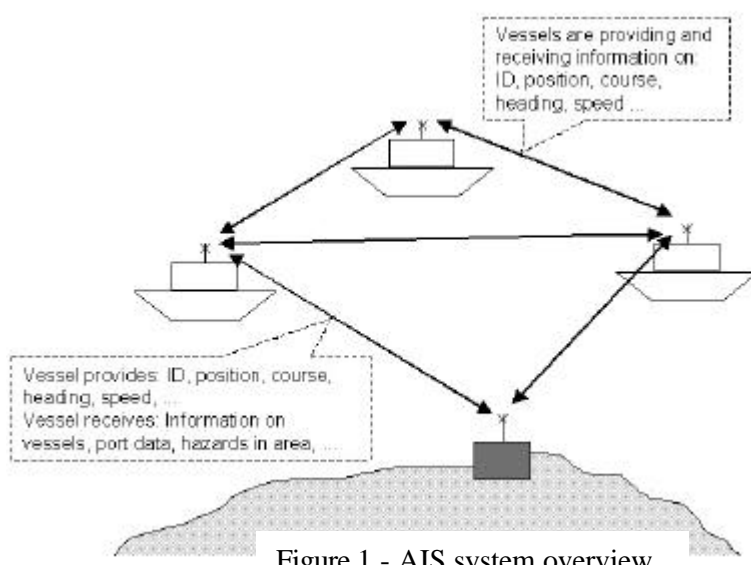


Figure 1 - AIS system overview

5 Shipborne AIS (see Figure 1):

- continuously transmits ship's own data to other vessels and VTS stations;
- continuously receives data of other vessels and VTS stations; and
- displays this data.

6 When used with the appropriate graphical display, shipborne AIS enables provision of fast, automatic information by calculating Closest Point of Approach (CPA) and Time to Closest Point of Approach (TCPA) from the position information transmitted by the target vessels.

7 AIS operates primarily on two dedicated VHF channels. Where these channels are not available regionally, the AIS is capable of being automatically switched to designated alternate channels by means of a message from a shore facility. Where no shore based AIS or GMDSS sea Area A1 station is in place, the AIS should be switched manually.

8 In practice, the capacity of the system is unlimited, allowing for a great number of ships to be accommodated at the same time.

9 The AIS is able to detect ships within VHF/FM range around bends and behind islands, if the landmasses are not too high. A typical value to be expected at sea is 20 to 30 nautical miles depending on antenna height. With the help of repeater stations, the coverage for both ship and VTS stations can be improved.

10 Information from a shipborne AIS is transmitted continuously and automatically without any intervention or knowledge of the OOW. An AIS shore station might require updated information from a specific ship by "polling" that ship, or alternatively, might wish to "poll" all

ships within a defined sea area. However, the shore station can only increase the ships' reporting rate, not decrease it.

AIS INFORMATION SENT BY SHIPS

Ship's data content

11 The AIS information transmitted by a ship is of three different types:

- fixed or static information, which is entered into the AIS on installation and need only be changed if the ship changes its name or undergoes a major conversion from one ship type to another;
- dynamic information, which, apart from 'Navigational status' information, is automatically updated from the ship sensors connected to AIS; and
- voyage-related information, which might need to be manually entered and updated during the voyage.

12 Details of the information referred to above are given in table 1 below:

Information item	Information generation, type and quality of information
Static	
MMSI (Maritime Mobile Service Identity)	Set on installation Note that this might need amending if the ship changes ownership
Call sign and name	Set on installation Note that this might need amending if the ship changes ownership
IMO Number	Set on installation
Length and beam	Set on installation or if changed
Type of ship	Select from pre-installed list
Location of position-fixing antenna	Set on installation or may be changed for bi-directional vessels or those fitted with multiple antennae

Dynamic	
Ship's position with accuracy indication and integrity status	Automatically updated from the position sensor connected to AIS The accuracy indication is for better or worse than 10 m.
Position Time stamp in UTC	Automatically updated from ship's main position sensor connected to AIS
Course over ground (COG)	Automatically updated from ship's main position sensor connected to AIS, if that sensor calculates COG This information might not be available
Speed over ground (SOG)	Automatically updated from the position sensor connected to AIS This information might not be available
Heading	Automatically updated from the ship's heading sensor connected to AIS
Navigational status	Navigational status information has to be manually entered by the OOW and changed as necessary, for example: <ul style="list-style-type: none"> - underway by engines - at anchor - not under command (NUC) - restricted in ability to manoeuvre (RIATM)

	<ul style="list-style-type: none"> - moored - constrained by draught - aground - engaged in fishing - underway by sail <p>In practice, since all these relate to the COLREGs, any change that is needed could be undertaken at the same time that the lights or shapes were changed</p>
Rate of turn (ROT)	<p>Automatically updated from the ship's ROT sensor or derived from the gyro</p> <p>This information might not be available</p>

Voyage-related	
Ship's draught	To be manually entered at the start of the voyage using the maximum draft for the voyage and amended as required (e.g. – result of de-ballasting prior to port entry)
Hazardous cargo (type)	<p>To be manually entered at the start of the voyage confirming whether or not hazardous cargo is being carried, namely:</p> <p>DG (Dangerous goods)</p> <p>HS (Harmful substances)</p> <p>MP (Marine pollutants)</p> <p>Indications of quantities are not required</p>
Destination and ETA	To be manually entered at the start of the voyage and kept up to date as necessary
Route plan (waypoints)	To be manually entered at the start of the voyage, at the discretion of the master, and updated when required

Short safety-related messages	
	Free format short text messages would be manually entered, addressed either a specific addressee or broadcast to all ships and shore stations

Table 1 - Data sent by ship

13 The data is autonomously sent at different update rates:

- dynamic information dependent on speed and course alteration (see table 2),
- static and voyage-related data every 6 minutes or on request (AIS responds automatically without user action).

Type of ship	General reporting interval
Ship at anchor	3 min
Ship 0-14 knots	12 sec
Ship 0-14 knots and changing course	4 sec
Ship 14-23 knots	6 sec
Ship 14-23 knots and changing course	2 sec
Ship >23 knots	3 sec
Ship >23 knots and changing course	2 sec

Table 2 - Report rate of dynamic information

Short safety-related messages

14 Short safety-related messages are fixed or free format text messages addressed either to a specified destination (MMSI) or all ships in the area. Their content should be relevant to the safety of navigation, e.g. an iceberg sighted or a buoy not on station. Messages should be kept as short as possible. The system allows up to 158 characters per message but the shorter the message the more easily it will find free space for transmission. At present these messages are not further regulated, to keep all possibilities open.

15 Operator acknowledgement may be requested by a text message.

16 Short safety-related messages are only an additional means of broadcasting maritime safety information. Whilst their importance should not be underestimated, use of such messages does not remove any of the requirements of the Global Maritime Distress and Safety System (GMDSS).

17 The operator should ensure that he displays and considers incoming safety-related messages and should send safety-related messages as required.

18 According to SOLAS regulation V/31 (Danger messages)

“The master of every ship which meets with dangerous ice, a dangerous derelict, or any other direct danger to navigation, or ...is bound to communicate the information by all the means at his disposal to ships at his vicinity, and also to the competent authorities...”.

19 Normally this is done via VHF voice communication, but “by all the means” now implies the additional use of the AIS short messages application, which has the advantage of reducing difficulties in understanding, especially when noting down the correct position.

Confidentiality

20 When entering any data manually, consideration should be given to the confidentiality of this information, especially when international agreements, rules or standards provide for the protection of navigational information.

OPERATION OF AIS ON BOARD

OPERATION OF THE TRAN SCIEVER UNIT

Activation

21 AIS should always be in operation when ships are underway or at anchor. If the master believes that the continual operation of AIS might compromise the safety or security of his/her ship, the AIS may be switched off. This might be the case in sea areas where pirates and armed robbers are known to operate. Actions of this nature should always be recorded in the ship's logbook together with the reason for doing so. The master should however restart the AIS as soon as the source of danger has disappeared. If the AIS is shut down, static data and voyage related information remains stored. Restart is done by switching on the power to the AIS unit. Ship's own data will be transmitted after a two minute initialization period. In ports AIS operation should be in accordance with port requirements.

Manual input of data

22 The OOW should manually input the following data at the start of the voyage and whenever changes occur, using an input device such as a keyboard:

- ship's draught;
- hazardous cargo;
- destination and ETA;
- route plan (way points);
- the correct navigational status; and
- short safety-related messages.

Check of information

23 To ensure that own ship's static information is correct and up-to-date, the OOW should check the data whenever there is a reason for it. As a minimum, this should be done once per voyage or once per month, whichever is shorter. The data may be changed only on the authority of the master.

24 The OOW should also periodically check the following dynamic information:

- positions given according to WGS 84;
- speed over ground; and
- sensor information.

25 After activation, an automatic built-in integrity test (BIIT) is performed. In the case of any AIS malfunction an alarm is provided and the unit should stop transmitting.

26 The quality or accuracy of the ship sensor data input into AIS would not however be checked by the BIIT circuitry before being broadcast to other ships and shore stations. The ship should therefore carry out regular routine checks during a voyage to validate the accuracy of the information being transmitted. The frequency of those checks would need to be increased in coastal waters.

DISPLAY OF AIS DATA

27 The AIS provides data that can be presented on the minimum display or on any suitable display device as described in annex 1.

Minimum display

28 The minimum mandated display provides not less than three lines of data consisting of bearing, range and name of a selected ship. Other data of the ship can be displayed by horizontal scrolling of data, but scrolling of bearing and range is not possible. Vertical scrolling will show all the other ships known to the AIS.

Graphical display

29 Where AIS information is used with a graphical display, the following target types are recommended for display:

- | | |
|-------------------------|--|
| Sleeping target | A sleeping target indicates only the presence of a vessel equipped with AIS in a certain location. No additional information is presented until activated, thus avoiding information overload. |
| Activated target | <p>If the user wants to know more about a vessel's motion, he has simply to activate the target (sleeping), so that the display shows immediately:</p> <ul style="list-style-type: none"> - a vector (speed and course over ground), - the heading, and - ROT indication (if available) to display actually initiated course changes. |
| Selected target | <p>If the user wants detailed information on a target (activated or sleeping), he may select it. Then the data received, as well as the calculated CPA and TCPA values, will be shown in an alpha-numeric window.</p> <p>The special navigation status will also be indicated in the alpha numeric data field and not together with the target directly.</p> |
| Dangerous target | If an AIS target (activated or not) is calculated to pass pre-set CPA and TCPA limits, it will be classified and displayed as a dangerous target and an alarm will be given. |
| Lost target | If a signal of any AIS target at a distance of less than a preset value is not received, a lost target symbol will appear at the latest position and an alarm will be given. |

Symbols

30 The user should be familiar with the symbology used in the graphical display provided.

INHERENT LIMITATIONS OF AIS

31 The officer of the watch (OOW) should always be aware that other ships, in particular leisure craft, fishing boats and warships, and some coastal shore stations including Vessel Traffic Service (VTS) centres, might not be fitted with AIS.

32 The OOW should always be aware that other ships fitted with AIS as a mandatory carriage requirement might switch off AIS under certain circumstances by professional judgement of the master.

33 In other words, the information given by the AIS may not be a complete picture of the situation around the ship.

34 The users must be aware that transmission of erroneous information implies a risk to other ships as well as their own. The users remain responsible for all information entered into the system and the information added by the sensors.

35 The accuracy of AIS information received is only as good as the accuracy of the AIS information transmitted.

36 The OOW should be aware that poorly configured or calibrated ship sensors (position, speed and heading sensors) might lead to incorrect information being transmitted. Incorrect information about one ship displayed on the bridge of another could be dangerously confusing.

37 If no sensor is installed or if the sensor (*e.g.* the gyro) fails to provide data, the AIS automatically transmits the "not available" data value. However, the built-in integrity check cannot validate the contents of the data processed by the AIS.

38 It would not be prudent for the OOW to assume that the information received from other ships is of a comparable quality and accuracy to that which might be available on own ship.

USE OF AIS IN COLLISION AVOIDANCE SITUATIONS

39 The potential of AIS as an anti-collision device is recognized and AIS may be recommended as such a device in due time.

40 Nevertheless, AIS information may be used to assist in collision avoidance decision-making. When using the AIS in the ship-to-ship mode for anti-collision purposes, the following cautionary points should be borne in mind:

- .1 AIS is an additional source of navigational information. It does not replace, but supports, navigational systems such as radar target-tracking and VTS; and
- .2 the use of AIS does not negate the responsibility of the OOW to comply at all times with the Collision Regulations.

41 The user should not rely on AIS as the sole information system, but should make use of all safety-relevant information available.

42 The use of AIS on board ship is not intended to have any special impact on the composition of the navigational watch, which should continue to be determined in accordance with the STCW Convention.

43 Once a ship has been detected, AIS can assist in tracking it as a target. By monitoring the information broadcast by that target, its actions can also be monitored. Changes in heading and course are, for example, immediately apparent, and many of the problems common to tracking targets by radar, namely clutter, target swap as ships pass close by and target loss following a fast manoeuvre, do not affect AIS. AIS can also assist in the identification of targets, by name or call sign and by ship type and navigational status.

ADDITIONAL AND POSSIBLE FUTURE APPLICATIONS***AIS IN VTS OPERATIONS*****Pseudo AIS information**

44 VTS centres may send information about vessels which are not carrying AIS and which are tracked only by VTS radar via the AIS to vessels equipped with AIS. Any pseudo AIS target broadcast by VTS should be clearly identified as such. Particular care should always be taken when using information which has been relayed by a third party. Accuracy of these targets may not be as complete as actual directly-received targets, and the information content may not be as extensive.

Text messages

45 VTS centres may also send short messages either to one ship, all ships, or ships within a certain range or in a special area, e.g.:

- (local) navigational warnings;
- traffic management information; and
- port management information.

46 A VTS operator may request, by a text message, an acknowledgement from the ship's operator.

Note: The VTS should continue to communicate via voice VHF. The importance of verbal communication should not be underestimated. This is important to enable the VTS operator to:

- assess vessels' communicative ability; and
- establish a direct communication link which would be needed in critical situations.

(D)GNSS corrections

47 (D)GNSS corrections may be sent by VTS centres via AIS.

MANDATORY SHIP REPORTING SYSTEMS

48 AIS is expected to play a major role in ship reporting systems. The information required by coastal authorities in such systems is typically included in the static voyage-related and dynamic data automatically provided by the AIS system. The use of the AIS long-range feature, where information is exchanged via communications satellite, may be implemented to satisfy the requirements of some ship reporting systems.

AIS IN SAR OPERATIONS

49 AIS may be used in search and rescue operations, especially in combined helicopter and surface searches. AIS allows the direct presentation of the position of the vessel in distress on other displays such as radar or ECS/ECDIS, which facilitates the task of SAR craft. For ships in distress not equipped with AIS, the On Scene Co-ordinator (OSC) could create a pseudo AIS target.

AIDS TO NAVIGATION

50 AIS, when fitted to selected fixed and floating aids to navigation can provide information to the mariner such as:

- position;
- status;
- tidal and current data; and
- weather and visibility conditions.

AIS IN AN OVERALL INFORMATION SYSTEM

51 AIS will play a role in an overall international maritime information system, supporting voyage planning and monitoring. This will help Administrations to monitor all the vessels in their areas of concern and to track dangerous cargo.

REFERENCE DOCUMENTS

- IMO Recommendation on Performance Standards for a Universal Shipborne Automatic Identification System (AIS), (MSC. 74(69), Annex 3)
- IMO SOLAS Convention Chapter V
- ITU Radio Regulations, Appendix S18, Table of Transmitting Frequencies in the VHF Maritime Mobile Band
- ITU Recommendation on the Technical Characteristics for a Universal Shipborne Automatic Identification System (AIS) Using Time Division Multiple Access in the Maritime Mobile Band (ITU-R M.1371)
- IEC Standard 61993 Part 2: Universal Shipborne Automatic Identification System (AIS) Operational and Performance Requirements, Methods of Testing and required Test Results.

ANNEX 1

DESCRIPTION OF AIS**COMPONENTS**

1 In general, an onboard AIS (see figure 1) consists of:

- antennas;
- one VHF transmitter;
- two multi-channel VHF receivers;
- one channel 70 VHF receiver for channel management;
- a central processing unit (CPU);
- an electronic position-fixing system, Global Navigation Satellite System (GNSS) receiver for timing purposes and position redundancy;
- interfaces to heading and speed devices and to other shipborne sensors;
- interfaces to radar/Automatic Radar Plotting Aids (ARPA), Electronic Chart System/Electronic Chart Display and Information System (ECS/ECDIS) and Integrated Navigation Systems (INS);
- BIIT (built-in integrity test); and
- minimum display and keyboard to input and retrieve data.

With the integral minimum display and keyboard unit, the AIS would be able to operate as a stand-alone system. A stand-alone graphical display or the integration of the AIS data display into other devices such as INS, ECS/ECDIS or a radar/ARPA display would significantly increase the effectiveness of AIS, when achievable.

2 All onboard sensors must comply with the relevant IMO standards concerning availability, accuracy, discrimination, integrity, update rates, failure alarms, interfacing and type-testing.

3 AIS provides:

- a built in integrity test (BIIT) running continuously or at appropriate intervals;
- monitoring of the availability of data;
- an error detection mechanism of the transmitted data; and
- an error check on the received data.

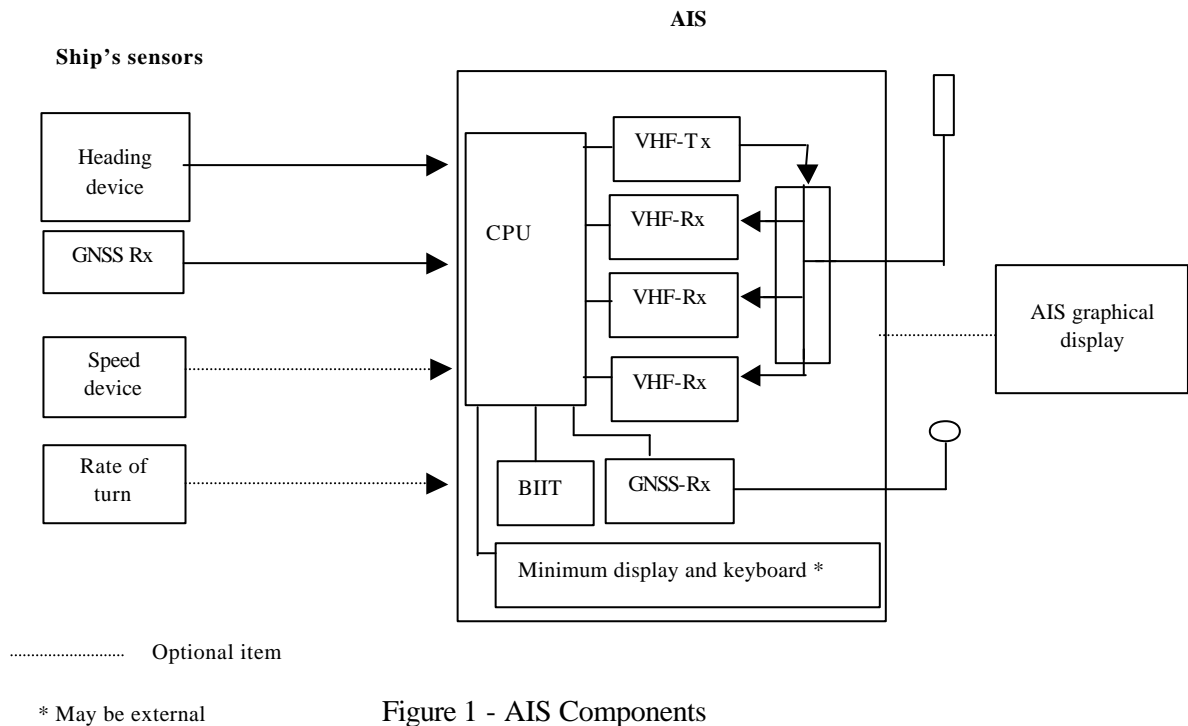


Figure 1 - AIS Components

CONNECTIONS

The connection of AIS to external navigational display systems

4 The AIS can be connected either to an additional dedicated AIS display unit, possibly one with a large graphic display, or to an existing navigational system such as radar or an electronic chart, but in the later case only as part of an integrated navigation system.

The connection of AIS to external portable navigational equipment

5 It is becoming common practice for pilots to possess their own portable navigational equipment, which they carry on board. Such devices can be connected to shipborne AIS equipment and display the targets they receive.

The connection of AIS to external long-range radiocommunication devices

6 AIS is provided with a two-way interface for connecting to long-range radiocommunication equipment. Initially, it is not envisaged that AIS would be able to be directly connected to such equipment.

7 A shore station would first need to request that the ship makes a long-range AIS information transmission. Any ship-to-shore communication would always be made point-to-point, and not broadcast, and once communication had been established, the ship would have the option of setting its AIS to respond automatically to any subsequent request for a ship report from that shore station.

8 Users are reminded that SOLAS regulation V/11.10 provides that the participation of ships in IMO-adopted ship reporting systems shall be free of charge to the ships concerned.

ANNEX 2

TECHNICAL DESCRIPTION

1 AIS operates primarily on two dedicated VHF channels (AIS1 - 161,975 MHz and AIS2 - 162,025 MHz). Where these channels are not available regionally, the AIS is capable of automatically switching to alternate designated channels.

2 The required ship reporting capacity according to the IMO performance standard amounts to a minimum of 2000 time slots per minute (see figure 2). The ITU Technical Standard for the Universal AIS provides 4500 time slots per minute. The broadcast mode is based on a principle called (S)TDMA (Self-organized Time Division Multiple Access) that allows the system to be overloaded by 400 to 500% and still provide nearly 100% throughput for ships closer than 8 to 10 NM to each other in a ship-to-ship mode. In the event of system overload, only targets far away will be subject to drop-out in order to give preference to targets close by that are a primary concern for ship-to-ship operation of AIS. In practice, the capacity of the system is unlimited, allowing for a great number of ships to be accommodated at the same time.

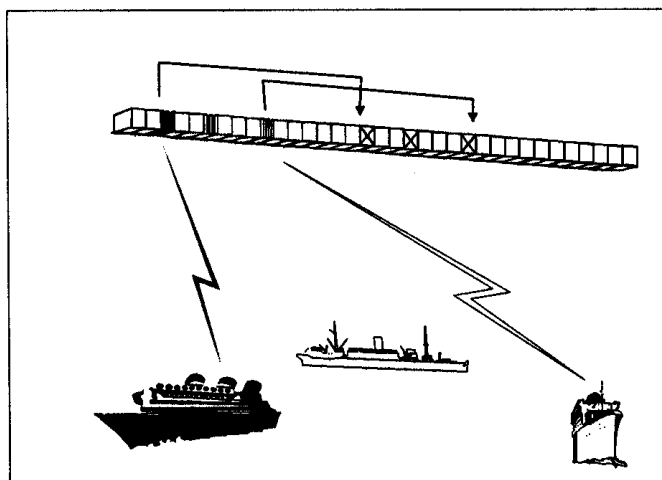


Figure 2 - Principles of TDMA

RESOLUTION MSC.202(81)
(adopted on 19 May 2006)

**ADOPTION OF AMENDMENTS TO THE INTERNATIONAL CONVENTION
FOR THE SAFETY OF LIFE AT SEA, 1974, AS AMENDED**

THE MARITIME SAFETY COMMITTEE,

RECALLING Article 28(b) of the Convention on the International Maritime Organization concerning the functions of the Committee,

RECALLING FURTHER article VIII(b) of the International Convention for the Safety of Life at Sea (SOLAS), 1974 (hereinafter referred to as “the Convention”), concerning the amendment procedure applicable to the Annex to the Convention, other than the provisions of chapter I thereof,

HAVING CONSIDERED, at its eighty-first session, amendments to the Convention, proposed and circulated in accordance with article VIII(b)(i) thereof,

1. ADOPTS, in accordance with article VIII(b)(iv) of the Convention, amendments to the Convention, the text of which is set out in the Annex to the present resolution;
2. DETERMINES, in accordance with article VIII(b)(vi)(2)(bb) of the Convention, that the said amendments shall be deemed to have been accepted on 1 July 2007, unless, prior to that date, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than 50% of the gross tonnage of the world’s merchant fleet, have notified their objections to the amendments;
3. INVITES SOLAS Contracting Governments to note that, in accordance with article VIII(b)(vii)(2) of the Convention, the amendments shall enter into force on 1 January 2008 upon their acceptance in accordance with paragraph 2 above;
4. REQUESTS the Secretary-General, in conformity with article VIII(b)(v) of the Convention, to transmit certified copies of the present resolution and the text of the amendments contained in the Annex to all Contracting Governments to the Convention;
5. FURTHER REQUESTS the Secretary-General to transmit copies of this resolution and its Annex to Members of the Organization, which are not Contracting Governments to the Convention.

ANNEX

**AMENDMENTS TO THE
INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974,
AS AMENDED**

**CHAPTER V
SAFETY OF NAVIGATION**

Regulation 2 – Definitions¹

- 1 The following text is inserted after the existing paragraph 5:

“6 *High-speed craft* means a craft as defined in regulation X/1.3.

7 *Mobile offshore drilling unit* means a mobile offshore drilling unit as defined in regulation XI-2/1.1.5.”

- 2 The following new regulation 19-1 is inserted after the existing regulation 19:

**“Regulation 19-1
Long-range identification and tracking of ships**

1 Nothing in this regulation or the provisions of performance standards and functional requirements² adopted by the Organization in relation to the long-range identification and tracking of ships shall prejudice the rights, jurisdiction or obligations of States under international law, in particular, the legal regimes of the high seas, the exclusive economic zone, the contiguous zone, the territorial seas or the straits used for international navigation and archipelagic sea lanes.

2.1 Subject to the provisions of paragraphs 4.1 and 4.2, this regulation shall apply to the following types of ships engaged on international voyages:

- .1 passenger ships, including high-speed passenger craft;
- .2 cargo ships, including high-speed craft, of 300 gross tonnage³ and upwards; and
- .3 mobile offshore drilling units.

¹ The amendments to regulation 2 take into account the amendments to the regulation which were adopted on 20 May 2004, under cover of resolution MSC.153(78), and which will enter into force on 1 July 2006.

² Refer to the Performance standards and functional requirements for the long-range identification and tracking of ships, adopted by the Maritime Safety Committee of the Organization by resolution MSC.210(81).

³ The gross tonnage to be used for determining whether a cargo ship or high-speed craft is required to comply with the provisions of this regulation shall be that determined under the provisions of the International Convention on Tonnage Measurement of Ships, 1969 irrespective of the date on which the ship or high-speed craft has been or is being constructed.

2.2 The term “ship”, when used in paragraphs 3 to 11.2, includes the passenger and cargo ships, the high-speed craft and the mobile offshore drilling units which are subject to the provisions of this regulation.

3 This regulation establishes provisions to enable Contracting Governments to undertake the long-range identification and tracking of ships.

4.1 Ships shall be fitted with a system to automatically transmit the information specified in paragraph 5 as follows:

- .1 ships constructed on or after 31 December 2008;
- .2 ships constructed before 31 December 2008 and certified for operations:
 - .1 in sea areas A1 and A2, as defined in regulations IV/2.1.12 and IV/2.1.13; or
 - .2 in sea areas A1, A2 and A3, as defined in regulations IV/2.1.12, IV/2.1.13 and IV/2.1.14;not later than the first survey of the radio installation after 31 December 2008;
- .3 ships constructed before 31 December 2008 and certified for operations in sea areas A1, A2, A3 and A4, as defined in regulations IV/2.1.12, IV/2.1.13, IV/2.1.14 and IV/2.1.15, not later than the first survey of the radio installation after 1 July 2009. However, these ships shall comply with the provisions of subparagraph .2 above whilst they operate within sea areas A1, A2 and A3.

4.2 Ships, irrespective of the date of construction, fitted with an automatic identification system (AIS), as defined in regulation 19.2.4, and operated exclusively within sea area A1, as defined in regulation IV/2.1.12, shall not be required to comply with the provisions of this regulation.

5 Subject to the provisions of paragraph 4.1, ships shall automatically transmit the following long-range identification and tracking information:

- .1 the identity of the ship;
- .2 the position of the ship (latitude and longitude); and
- .3 the date and time of the position provided.

6 Systems and equipment used to meet the requirements of this regulation shall conform to performance standards and functional requirements⁴ not inferior to those adopted by the Organization. Any shipboard equipment shall be of a type approved by the Administration.

⁴ Refer to the Performance standards and functional requirements for the long-range identification and tracking of ships, adopted by the Maritime Safety Committee of the Organization by resolution MSC.210(81).

7 Systems and equipment used to meet the requirements of this regulation shall be capable of being switched off on board or be capable of ceasing the distribution of long-range identification and tracking information:

- .1 where international agreements, rules or standards provide for the protection of navigational information; or
- .2 in exceptional circumstances and for the shortest duration possible where the operation is considered by the master to compromise the safety or security of the ship. In such a case, the master shall inform the Administration without undue delay and make an entry in the record of navigational activities and incidents maintained in accordance with regulation 28 setting out the reasons for the decision and indicating the period during which the system or equipment was switched off.

8.1 Subject to the provisions of paragraphs 8.2 to 11.2, Contracting Governments shall be able to receive long-range identification and tracking information about ships, for security and other purposes as agreed by the Organization, as follows:

- .1 the Administration shall be entitled to receive such information about ships entitled to fly its flag irrespective of where such ships may be located;
- .2 a Contracting Government shall be entitled to receive such information about ships which have indicated their intention to enter a port facility, as defined in regulation XI-2/1.1.9, or a place under the jurisdiction of that Contracting Government, irrespective of where such ships may be located provided they are not located within the waters landward of the baselines, established in accordance with international law, of another Contracting Government; and
- .3 a Contracting Government shall be entitled to receive such information about ships entitled to fly the flag of other Contracting Governments, not intending to enter a port facility or a place under the jurisdiction of that Contracting Government, navigating within a distance not exceeding 1,000 nautical miles of its coast provided such ships are not located within the waters landward of the baselines, established in accordance with international law, of another Contracting Government; and
- .4 a Contracting Government shall not be entitled to receive, pursuant to subparagraph .3, such information about a ship located within the territorial sea of the Contracting Government whose flag the ship is entitled to fly.

8.2 Contracting Governments shall specify and communicate to the Organization relevant details, taking into account the performance standards and functional requirements adopted by the Organization⁵, to enable long-range identification and

⁵ Refer to the Performance standards and functional requirements for the long-range identification and tracking of ships, adopted by the Maritime Safety Committee of the Organization by resolution MSC.210(81).

tracking information to be made available pursuant to the provisions of paragraph 8.1. The Contracting Government concerned may, at any time thereafter, amend or withdraw such communication. The Organization shall inform all Contracting Governments upon receipt of such communication together with the particulars thereof.

9.1 Notwithstanding the provisions of paragraph 8.1.3, the Administration shall be entitled, in order to meet security or other concerns, at any time, to decide that long-range identification and tracking information about ships entitled to fly its flag shall not be provided pursuant to the provisions of paragraph 8.1.3 to Contracting Governments. The Administration concerned may, at any time thereafter, amend, suspend or annul such decisions.

9.2 The Administration concerned shall communicate, pursuant to paragraph 9.1, such decisions to the Organization. The Organization shall inform all Contracting Governments upon receipt of such communication together with the particulars thereof.

9.3 The rights, duties and obligations, under international law, of the ships whose Administration invoked the provisions of paragraph 9.1 shall not be prejudiced as a result of such decisions.

10 Contracting Governments shall, at all times:

- .1 recognize the importance of long-range identification and tracking information;
- .2 recognize and respect the commercial confidentiality and sensitivity of any long-range identification and tracking information they may receive;
- .3 protect the information they may receive from unauthorized access or disclosure; and
- .4 use the information they may receive in a manner consistent with international law.

11.1 Contracting Governments shall bear all costs associated with any long-range identification and tracking information they request and receive. Notwithstanding the provisions of paragraph 11.2, Contracting Governments shall not impose any charges on ships in relation to the long-range identification and tracking information they may seek to receive.

11.2 Unless the national legislation of the Administration provides otherwise, ships entitled to fly its flag shall not incur any charges for transmitting long-range identification and tracking information in compliance with the provisions of this regulation.

12 Notwithstanding the provisions of paragraph 8.1, the search and rescue services of Contracting Governments shall be entitled to receive, free of any charges, long-range identification and tracking information in relation to the search and rescue of persons in distress at sea.

13 Contracting Governments may report to the Organization any case where they consider that provisions of this regulation or of any other related requirements established by the Organization have not been or are not being observed or adhered to.

14 The Maritime Safety Committee shall determine the criteria, procedures and arrangements for the establishment, review and audit of the provision of long-range identification and tracking information to Contracting Governments pursuant to the provisions of this regulation.”
